

**IN THE MATTER OF THE APPLICATION REGARDING CONVERSION  
OF PREMIER BLUE CROSS AND ITS AFFILIATES**

Washington State Insurance Commissioner's Docket # G02-45

**PRE-FILED RESPONSIVE TESTIMONY OF:**

**Brian Kinhead**  
Banc of America Securities

April 15, 2004

**CONFIDENTIAL and PROPRIETARY  
NOT FOR PUBLIC DISCLOSURE**

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**Introduction of Witness**

**Q. Please state your name.**

A. Brian Kinkead.

**Q. Please identify your employer and state your title.**

A. I am a Managing Director in the Healthcare Group of Global Corporate and Investment Banking at Banc of America Securities ("BAS") in New York, New York.

**Q. Are you the same Brian Kinkead who filed direct testimony on March 31, 2004, in this proceeding?**

A. Yes.

**Q. Have you read the pre-filed direct testimony filed in this matter?**

A. I have read the prefiled testimony that pertains to my testimony, including specifically the testimony of Patrick H. Cantilo, of Cantilo & Bennett, L.L.P., and Jonathan Koplovitz and Martin Alderson Smith from the Blackstone Group, as well as Messrs. Larsen and Katz on behalf of the Intervenors.

**Q. Do you have a response to any of the matters set forth in those direct testimonies?**

A. Yes. I would like to respond to testimony on the following subjects:

**I. General Points**

**A. General Agreement by OIC Consultants with BAS Reports**

**Q. In general, are you aware of any areas where your findings are in disagreement with the findings of the OIC Consultants?**

A. Mr. Alderson Smith said he did not have any huge disagreements with my first report (Alderson Smith Deposition 11/25/03, p. 307<sup>1</sup>). He specifically agreed that it is

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<sup>1</sup> Included with my testimony as Exhibit A is a collection of the pages from the deposition transcripts of Martin Alderson Smith and Jonathan Koplovitz that I refer to in my testimony. The exhibit collects the references in page number order, and also includes the cover pages from each day of deposition and the Court Reporters' certificates for each day.

1 reasonable for Premera to take advantage of its current financial position to access public  
2 equity markets, increase strategic flexibility and execute its strategic objectives (*id.*, p.  
3 308). He also agreed that Premera's rationale and metrics should satisfy investor  
4 expectations, taking into account past trends and current market conditions, and therefore  
5 be viewed as an attractive investment (*id.*). He agreed that the transaction's structure and  
6 terms as set out in the original Form A would be acceptable to investors (*id.*, p. 309).

7         The only remark that I am aware of that could be construed as a disagreement is  
8 the comment that I did not delve into the details of the transaction to the extent that  
9 Blackstone and some of the other consultants may have. The reason I did not do so was  
10 because it was not necessary for the purposes of my analysis. In considering Premera as  
11 an investment, what matters the most is the performance of the company. As discussed  
12 later in this testimony, investors are also concerned that a foundation created as a result of  
13 a health plan conversion will not use its position as a shareholder to control the publicly  
14 held company to the possible detriment of other shareholders. Investors are not,  
15 however, typically concerned with the minute details of underlying governance terms  
16 such as whether each foundation has a director, or one of them only an observer, or  
17 whether Alaska and Washington get to vote freely with 10 percent or 5 percent of the  
18 shares.

19         I also note that Mr. Alderson Smith reviewed my Supplemental Report at his  
20 March 9 deposition, and was in substantial agreement with all but a very few points  
21 (Alderson Smith Deposition 3/9/04, pp. 156-169).

22  
23  
24

**B. Need for a Valuation of Premera**

1  
2 **Q. The intervenors' consultants have criticized Premera and the OIC for not**  
3 **doing a valuation of Premera in connection with their investigation of this**  
4 **transaction. Do you have a comment on that?**

5 A. I believe that a properly conducted IPO will result in the shares being sold for  
6 their market value. Therefore, it is unnecessary for either Blackstone or BAS to do a  
7 valuation prior to the IPO. Mr. Koplovitz and Mr. Alderson Smith both agreed in their  
8 depositions. Mr. Koplovitz testified, "...a properly conducted IPO can satisfy a fair value  
9 test..." (Koplovitz Deposition 11/20/03, p. 38). because once the IPO happens,  
10 presumably the valuation is established by the market (*id.*, p.49, *see also* Alderson Smith  
11 Deposition 11/24/03, pp. 16-17, and 11/25/03, pp. 295-296). Indeed, the best proxy for  
12 the value of a publicly held company is the number of total shares multiplied by the share  
13 price, another point of agreement between BAS and Blackstone (Koplovitz Deposition  
14 11/21/03, p. 243). Determining the value of Premera today would be of limited use, as  
15 changes in the markets that could occur between today and the IPO can make a great deal  
16 of difference in the value of the company (Koplovitz Deposition 11/20/03, p. 38).

17 **C. Negative Impact Resulting from Loss of Blue Trademark**

18 **Q. You have also said that losing the Blue trademarks would negatively impact**  
19 **the value of Premera. Is there agreement among the OIC Consultants on this**  
20 **point?**

21 A. I believe that there is agreement that losing the Blue marks would negatively  
22 impact the value of Premera — with the possible exception of Mr. Cantilo. Mr. Koplovitz  
23 testified that losing the mark would be very damaging to the company and its business  
24 (Koplovitz Deposition 11/20/03, p. 134). He also confirmed my view that the Blue  
marks contribute substantially to Premera's value and its future prospects (Koplovitz

1 Deposition 3/8/04, p. 95). Mr. Alderson Smith testified in his most recent deposition that  
2 the loss of the trademark license would lead to a major diminution in Premera's value  
3 (Alderson Smith Deposition 3/9/04, p. 12).

4 In contrast, in his report, Mr. Cantilo opines that Premera has not shown that the  
5 harm from losing the marks is worse than the harm from imposing what I view as  
6 relatively minor restrictions on the shareholder rights of the Foundations (*e.g.*, treating  
7 the Foundations as one for purposes of free-voting shares and the divestiture schedule.)  
8 Mr. Alderson Smith also acknowledged that whatever negative impact (if any) on share  
9 value would result from these restrictions would pale in comparison to the impact of  
10 losing the marks (Alderson Smith Deposition 3/9/09, pp. 155-156).

11 **D. Raising Capital for General Corporate Purposes**

12 **Q. In your report and in your direct testimony, you said that companies often**  
13 **raise capital to be used for "general corporate purposes." Do the OIC Staff**  
14 **Consultants agree with you?**

15 **A.** Yes. Mr. Koplovitz referred to this as "fairly common" (Koplovitz Deposition  
16 11/21/03, p. 245). Mr. Alderson Smith also testified that a number of companies state  
17 that a portion of their capital is being raised for "general corporate purposes". He  
18 described the category as follows:

19 "General corporate purposes" is a sort of catchall phrase for any number of  
20 uses. Some of those uses may be quite small. Some of those uses may not  
21 be immediate. And therefore, "general corporate purposes" is quite a nice  
22 phrase to – as a catchall phrase to indicate that now is an opportune time to  
23 raise some money, but we don't necessarily know exactly how it's going to  
24 be deployed, and we don't know exactly when it's going to be deployed.  
Or it's going to be deployed into so many small buckets that we don't  
necessarily want to enumerate them in the S-1.

(Alderson Smith Deposition 11/25/03, p. 296).

**E. Raising Capital to Improve Risk-Based Capital Ratio**

**Q. Your reports refer to Premera's desire to increase its Risk-Based Capital ("RBC") ratio as a reason for its wanting access to capital. Do the OIC Consultants agree that this is a sensible reason for Premera to attempt an IPO?**

**A. Yes.** Mr. Koplovitz agreed that it was reasonable in his judgment for the Premera Board to want to raise its RBC ratio (Koplovitz Deposition 11/21/03, p. 269). As Mr. Alderson Smith put it,

The RBC ratio is a relevant metric because it indicates the financial strength, the claims – ultimately, the claims-paying ability of the company. And it is important for a whole host of reasons, including regulatory reasons, marketing reasons. In other words, you'd want to generally ensure with a business that has a sound financial position that you know it will be able to pay – make good on all legitimate claims. And therefore, for marketing reasons, for regulatory reasons, and also for BCBSA reasons, it is important to have a solid financial footing, which is often expressed as an RBC ratio.

(Alderson-Smith Deposition 11/25/03, p. 257).

**F. Timing for Raising Capital**

**Q. In your report, you indicate that it is much better to go to market when the need for capital is not acute than when it is. Do the OIC's Consultants share this view?**

**A. Yes.** Mr. Koplovitz testified that waiting until Premera's RBC ratio was lower than it is now would be potentially a negative factor, because waiting to go to market until a time when you have an acute need for capital is not ideal (Koplovitz Deposition 11/21/03, p. 303; *see also* Alderson Smith Deposition 11/24/03, pp. 122-123, 11/25/03, pp. 278-279). He also agreed that companies are better able to raise capital when they are in a strong financial position, and that successful companies often raise capital before an actual specific need arises in order to achieve strategic flexibility (Koplovitz Deposition 11/21/03, p. 368). Indeed, Mr. Alderson Smith testified that Blackstone has advised

various clients to raise capital even when there is not an immediate need (Alderson Smith Deposition 11/24/03, pp. 121-122).

**G. An IPO is the Most Reasonable Way to Raise Capital**

**Q. In your reports, you conclude that completing an IPO is the most reasonable way for Premera to raise capital and increase strategic flexibility. Do the OIC Consultants share this conclusion?**

A. Yes. I understand that Mr. Koplovitz agreed with me on this point (Koplovitz Deposition 11/21/03, p. 371).

**H. Need to Balance Control and Value**

**Q. In your reports, you refer to the fact that limitations upon the Foundation can support the value of the Company's shares, which are the Foundation's principal asset. Did you find support for your views from any of the OIC consultants?**

A. Yes. Mr. Alderson Smith agreed with this analysis. He characterized it as a "...question of balance in terms of what is appropriate – what is most appropriate or in the best interests of the foundation may not necessarily be in the best interests of the company or the new investors" (Alderson Smith Deposition 11/24/03, p. 27). Mr. Alderson Smith expounded on that at pp. 135-136 of his 11/24/03 deposition, where he said:

There are a series of tensions. And obviously the key is to get the balance right between flexibility and control by the foundation as opposed to maximizing the value to the foundation. And those are – those are somewhat at odds with one another. ... It may be that the foundation may be perceived as having different interests from the new investors that come in at the time of the IPO. And therefore, those new investors need to feel comfortable that the foundation is not going to do something that is, to those new investors, not economically rational or that is economically beneficial to those new investors. And therefore, there has to be some comfort given to the new investors that the foundation is not going to pursue a strategy that might be damaging to those new investors. Because if that assurance is not given, the value that those new investors will pay for those new shares in Premera could be less, which would also be a problem for the foundation.



1 Maintaining the balance between the desires of the Foundations and the needs of the  
2 Company is important to the transaction. In my opinion, the Amended Form A filed by  
3 Premera takes this into account and maintains this balance in a way that is likely to be  
4 well-received by investors.

5  
6 **I. Premera as Candidate for Public Offering**

7 **Q. In your reports, you have said that Premera would be attractive to investors.  
Do any of the OIC Consultants share your opinion?**

8 A. Yes. Mr. Koplovitz said, "...Premera, based on what we've seen, is a good  
9 candidate to do a public offering. It seems it's about the right size. It seems - has a lot of  
10 attractive qualities. It had a good growth trajectory over the last few years. The market  
11 for these companies is still pretty good" (Koplovitz Deposition 11/20/03, p. 130). Later,  
12 he observed that Premera scored well in the fundamentals on which investors focus  
13 (Koplovitz Deposition 11/21/03, pp. 309-310; *see also id.*, p. 374).

14 **II. Transaction Issues**

15 **A. Divestiture Schedule**

16 **Q. The OIC Staff's Consultants suggest that each of the two Foundations should  
17 be able to set its own divestiture schedule. What types of problems can this  
cause?**

18 A. Mr. Alderson Smith testified that aggregate versus individual divestiture  
19 schedules would have no effect on share value "...so long as the stock is brought into the  
20 market in an orderly and regulated manner..." (Alderson Smith Deposition, 3/9/04, p. 95).  
21 It is the qualification, however, that opens the door to potential problems.

22 When there is a large shareholder, investors are most concerned that it divests its  
23 holdings in an orderly fashion. In previous transactions, this was accomplished by  
24

1 having in place a pre-determined and gradual divestiture schedule. Mr. Koplovitz agrees  
2 with this point and states that any divestiture schedule would need to be set up so there is  
3 an orderly flow of shares into the market. Otherwise, when the Foundations sell their  
4 shares, prices could fall and the Foundations may not realize as much from a sale  
5 (Koplovitz Deposition 11/20/03, p. 43).

6 Because of this factor, independent divestiture schedules could be problematic,  
7 not only with the BCBSA (which could well threaten the trademark license, as I  
8 discussed above) but with new investors as well. Unless the two Foundations have an  
9 agreement to work in tandem, a situation could occur where the Foundations are  
10 competing to sell shares in the open market. This could have deleterious effects on the  
11 overall market price of the shares and could also lead to uncertainty in the market.  
12 Blackstone agrees with this, since Mr. Alderson Smith said the same thing at his  
13 deposition (Alderson Smith Deposition 11/24/03, pp. 181-182; *see also id.*, 11/25/03, pp.  
14 229-230).

15 **Q. The OIC Staff's consultants have expressed concern that the transaction**  
16 **requires at least 20 percent of the stock of New Premera to be sold within one**  
**year after the IPO. What is your reaction?**

17 **A.** In the precedent transactions, such as WellChoice, the foundations and the  
18 company had no difficulty marketing 20 percent of the company's stock at the IPO.  
19 There is no reason to expect that these Foundations, together with the Company, will  
20 have difficulty disposing of that much stock in this case; in fact, they may want to sell  
21 more. Furthermore, it is important that after an IPO there is a sufficient amount of public  
22 shares (this is known as "float") so that trades do not influence the stock price too much.  
23 This point was also recognized by Mr. Koplovitz: "...if you have a very small float and  
24

1 people are trading a lot - you know, a big chunk of stock, it could drive the price down,  
2 so you want to make sure you have a big enough float" (Koplovitz Deposition 11/20/03,  
3 p. 42).

4 **B. Free Voting on Dilution Events of 20 Percent or More**

5 **Q. The OIC Staff's Consultants have suggested that the Foundations be**  
6 **permitted to vote freely on any Company transaction which would have the**  
7 **effect of transferring 20 percent or more of the ownership of the Company to**  
8 **a third party. Do you have an opinion on this?**

9 **A.** I do not see this as having much of an impact on share value. Mr. Alderson Smith  
10 agreed on that point (Alderson Smith Deposition 3/9/04 pp. 49-50).

11 That said, I have not seen a provision like this in any other transaction. Change in  
12 control is typically considered to be 50 percent or greater. While 20 percent can be a  
13 sizeable voting block in a proxy fight, it is highly unlikely that a 20 percent ownership  
14 block would be sufficient to gain control of the company. Also, the 50 percent or greater  
15 standard was used in precedent transactions, as WellChoice had the same provision that  
16 Premera proposes.

17 Although the New York Stock Exchange rule requires shareholder voting on  
18 stock issuances of 20 percent (or more), that rule is intended to protect a minority  
19 shareholder; generally, majority shareholders (which the Foundations collectively will be  
20 for some time, at least) do not require protection. Indeed, Mr. Alderson Smith conceded  
21 these points, and that the Voting Trust and Divestiture Agreement was itself intended to  
22 protect minority shareholders from the Washington and Alaska Foundations (Alderson  
23 Smith Deposition 3/9/04, pp. 44-45).  
24

**C. 5 Percent Free Voting For Each Foundation**

**Q. What is your reaction to the demand that each Foundation have the right to freely vote 5 percent (less one share) of the stock of Premera?**

A. First, as I stated in my direct testimony and in my reports, if including this term would cause the BCBSA to terminate the trademark license, then it should not be included. As I understand it, Premera has agreed to allow this provision if the BCBSA agrees. As I've stated before, except as it may affect the BCBSA trademark license, investors are not likely to care whether the combined free voting power of the Foundations is 5 percent or 10 percent--because it is unlikely to impact the Company's performance or the outcome of matters requiring shareholder votes. Mr. Alderson Smith agreed that the amount of stock held outside the voting trust would have an immaterial impact on the value of the Foundations' holdings (Alderson Smith Deposition 3/9/04, p. 60).

**D. Board Member Nomination Provisions**

**Q. Blackstone and other consultants object to a provision that allows Premera to reject all three of the Washington Foundation's nominees for director, in effect forcing the Foundation to start over. What is your perspective on this?**

A. The key concern from an investor perspective is that the Board of Premera is comprised of qualified individuals. The nomination mechanism proposed in the Voting Trust Agreement allows Premera to achieve this goal while continuing to provide the Foundations with the flexibility to choose nominees. Furthermore, the nomination mechanism proposed by Premera is consistent with precedent, as the WellChoice transaction had exactly the provision that Premera proposes.

**E. Termination of Voting Trust and Divestiture Agreement ("VTDA") Upon Loss of Blue Trademarks**

**Q. The OIC Staff's Consultants would like to see a provision terminating the VTDA if the trademarks are lost. What do you think of this?**

**A.** The VTDA can have a positive effect by providing stability in the capital markets with respect to the voting, liquidity and divestiture of shares held in a converting company. Mr. Koplovitz acknowledged this as well (Koplovitz Deposition, 3/8/04, pp. 95-96). In addition to the voting of the Premera shares by the Foundations, investors are most concerned that the shares owned by the Foundations will be divested in an orderly fashion, regardless of whether or not Premera holds the Blue marks.

**F. Termination of Right to Nominate a Director After Five Years**

**Q. The OIC Staff's Consultants have objected to the provision terminating the Washington Foundation's right to nominate a director after five years. Please respond.**

**A.** Premera's proposal on this point is consistent with the WellChoice transaction and thus would be accepted by investors. As a result, it is unlikely that eliminating this provision would materially improve the value of the Foundation's shares, a point echoed by Mr. Alderson Smith in his deposition (Alderson Smith Deposition 3/9/04, pp. 94-95).

**III. Cantilo Report**

**A. Comparison of Premera's Revised Form A With Precedent Transactions**

**Q. Mr. Cantilo observed in his report that the transaction terms in Premera's amended Form A remained out of line with precedent transactions. Do you agree with that?**

**A.** Not at all. I have attached as Exhibit B, a table of key terms of precedent transactions, including WellChoice, with a column comparing Premera's proposed terms

1 in the amended Form A. In general, Premera's proposal is consistent with any precedent  
2 transaction, including WellChoice.

3 **B. Concern that Restrictions Reduce Value of Consideration**

4 **Q. Mr. Cantilo concludes at p. 81 of his report that "a variety of stock**  
5 **restriction and other conditions are likely to reduce materially the value of**  
6 **the consideration received" by the Foundations. Please comment.**

7 A. I have difficulty discerning that any of the restrictions that would have a material  
8 impact on the sale price of Premera's stock, which, as I discussed above, is the measure  
9 of value of the company. I discuss many of the items he noted specifically in this  
10 testimony. They are unlikely, individually or collectively, to have a material negative  
11 impact on the value of the Foundation shares. I do not understand the basis for Mr.  
12 Cantilo's statement.

13 **IV. Conclusion**

14 **A. Premera's Transaction Terms are Consistent with the WellChoice Model**

15 **Q. Do the continued objections to the transaction by the OIC Staff's**  
16 **Consultants surprise you in light of the movement that Premera has made on**  
17 **its terms?**

18 A. Yes. The OIC Staff's Consultants in their reports and depositions stated that the  
19 WellChoice transaction was the best model to follow. Mr. Koplovitz, for example,  
20 testified that the Premera transaction structure would be more agreeable if it resembled  
21 WellChoice more than the other precedent transactions (Koplovitz Deposition 11/21/03,  
22 p. 396-397).

23 Mr. Alderson Smith acknowledged that Premera had made concessions that went  
24 beyond anything that had been done in WellChoice:

- On voting rights issues generally permitted to the Foundations, Mr. Alderson Smith testified that the amended Form A VTDA was a little broader than

1 WellChoice, and he wasn't aware of any other areas where it was different. He  
2 then agreed that, to the extent the OIC Staff's Consultants sought further increases  
3 to the Foundation's free voting rights, those were more favorable to the  
Foundation than the WellChoice transaction (Alderson Smith Deposition 3/9/04,  
p. 136);

- 4 • A three-year restriction period on changing the executive equity compensation  
5 plan, longer than the one-year wait for stock options in WellChoice (*id.*, pp. 67-  
68);
- 6 • No precedent allowing free voting on changes to the executive equity  
7 compensation plan which do not go into effect until after the restriction period  
(*id.*, p. 67).

8 In conclusion, the current transaction as proposed is in line with the WellChoice  
9 transaction and, as a result, should be saleable from an investor standpoint.

10 **Q. Does this conclude your responsive testimony?**

11 **A.** Yes, it does.

1 VERIFICATION

2  
3 I, BRIAN KINKEAD, declare under penalty of perjury of the laws of the State of  
4 Washington that the foregoing answers are true and correct.

5 Dated this \_\_\_\_ day of April, 2004, at New York, New York.

6  
7 /s/  
8 BRIAN KINKEAD  
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**EXHIBIT A**

**Brian Kinhead**

**EXHIBIT A**

BEFORE THE INSURANCE COMMISSION  
OF THE STATE OF WASHINGTON

In the Matter of the Application  
Regarding the Conversion and  
Acquisition of Control of Premera Blue  
Cross and its Affiliates

NO. G 02-45

**COPY**

DEPOSITION UPON ORAL EXAMINATION OF

JONATHAN KOPLOVITZ

Day 1 of 2  
November 20, 2003  
Seattle, Washington

Taken Before:

PAMELA J. KLESSIG, RPR, CCR No. 2948  
Registered Professional Reporter  
of  
CAPITOL PACIFIC REPORTING, INC..  
2401 Bristol Court S.W.  
Olympia, WA 98502  
Phone: 360/352-2054  
Fax: 360/754-4240  
Toll Free: 1-800-407-0148  
e-mail: capitol@callatg.com



1       needed.

2   Q   Anything else come to mind?

3   A   Those were the major - those are pretty major valuation  
4       techniques, so that's - you know, that was the crux of it.

5   Q   Can you tell me why you determined that you didn't need to do  
6       a discounted cash flow valuation?

7   A   Well, in the end, if you determine that an IPO - a properly  
8       conducted IPO can satisfy a fair value test, and again I'm  
9       not a lawyer, but assuming that's true, then doing a  
10      discounted cash flow analysis now, you know, six or eight  
11      months in advance of when the IPO might actually happen  
12      probably doesn't make a lot of sense. We may want to do one  
13      as we get closer to the IPO, but what happens is markets  
14      change, stock prices go up and down, multiples go up and go  
15      down, so the company's projections might change. So doing a  
16      discounted cash flow now really won't tell us much about what  
17      the IPO value is going to be. So we thought, you know, one,  
18      the IPO has to be fair and we need to monitor the IPO if  
19      that's the case, but two, we might need to do a DCF at the  
20      time of the IPO, but doing it now really just doesn't make a  
21      lot of sense.

22   Q   Okay. And DCF is a discounted cash flow?

23   A   Discounted cash flow, correct.

24   Q   I think also you said you decided you didn't really need to  
25       evaluate comparable transactions, M&A-type transactions;

1 deal that could cause the stock to go down. You know,  
2 there's clearly a lot of things that could happen with the  
3 company which can cause the stock to go down.

4 Q Sure.

5 A But earnings is a big driver.

6 Q Is the extent of the float also important in this kind of  
7 consideration?

8 A Yes.

9 Q Can you explain that to me, please.

10 A Well, typically, you know, some stock will be sold to the  
11 public but there still will be a lot of stock held by the  
12 foundation, and they are going to need to sell that stock.  
13 And so you want to have a big enough trading market so that  
14 the stock can trade without overly influencing the price. So  
15 if you have a very small float and people are trading a lot -  
16 you know, a big chunk of stock, it could drive the price  
17 down, so you want to make sure you have a big enough float.  
18 So that is important.

19 There is also the issue of overhang. You know, people  
20 may be concerned with such a big stockholder, that that stock  
21 go out in an orderly fashion. So that's important as well.

22 Q So, let's take those in turn, if we can.

23 A Yeah.

24 Q I think what you were saying, and forgive me if I'm a little  
25 slow on the uptake here --

1 A Yeah.

2 Q -- is that you need to have a large enough volume of shares  
3 in the marketplace so that single trades or even large trades  
4 don't move the stock price too much; is that right?

5 A That's right.

6 Q And then with respect to the overhang, the issue there is the  
7 potential of large volumes of shares coming onto the market  
8 and the fear of that potentially keeping the price down; is  
9 that right?

10 A That's correct.

11 Q So, is it consistent with trying to minimize the adverse  
12 effects of the overhang to have sort of a gradual and  
13 somewhat predictable divestiture schedule?

14 A Yes, you want to have it set up so there's an orderly flow of  
15 shares into the market.

16 Q Otherwise, when the foundation shareholder sells its shares,  
17 the prices are going to drop and they won't realize as much;  
18 is that right?

19 A That's correct.

20 Q Okay. You said, I think, also that you wanted to be sure  
21 that the foundation shareholder can liquidate in an orderly  
22 fashion --

23 A Right.

24 Q -- and we touched upon that. Is there more to it than having  
25 some predictability and extended period of time to accomplish

1 that, that you have in mind when you are thinking about  
2 fairness in this context?

3 A I think it comes down to flexibility, having the flexibility  
4 to sell their shares without - you know, obviously too much  
5 flexibility is not a good thing. But having enough  
6 flexibility - you know, obviously they have a very aggressive  
7 divestiture schedule that they need to meet under the plan.  
8 So having enough flexibility so that you are able to achieve  
9 those milestones is important.

10 Q So, if I'm understanding you correctly, you obviously don't  
11 want to be selling stock in a down market, you want to be  
12 able to time your sales in such a fashion as to maximize the  
13 returns to the foundation shareholder; right?

14 A That's correct.

15 Q And you need to do that consistent with some kind of orderly  
16 structure for the disposition of shares, and there's some  
17 balance that takes place between flexibility and orderliness;  
18 is that right?

19 A That's correct.

20 Q And I think the last thing you mentioned with respect to the  
21 fairness point is that you want to make sure that there's  
22 appropriate governance for the foundation shareholder?

23 A Yes.

24 Q Can you tell me what you mean by that, appropriate  
25 governance?

1 A Yeah. Well, typically, you know, one shareholder owns 75 or  
2 80 percent of a company, they will control that company, they  
3 will be able to represent the board of directors, they will  
4 be able to make the decisions on any major corporate action.  
5 And in this situation, because of the Blue Cross/Blue Shield  
6 limitations, the company is not allowed to have control, but  
7 they still own such a large chunk of stock that they need to  
8 be able to influence certain corporate decisions possibly, to  
9 protect their investment.

10 Q What kinds of decisions do you think sufficiently implicate  
11 the foundation shareholders' interests to warrant having a  
12 large voice in those decisions?

13 A I think the things that I'm thinking of, major corporate  
14 transactions, you know, adoption of equity plans, things that  
15 could, if they don't go favorably, have a real impact on the  
16 value of their stake. But there's probably others. Those  
17 are just a couple off the top of my head.

18 Q So major transactions you would think of selling the company,  
19 potentially disposing of major divisions of the company,  
20 something like that?

21 A Big mergers. Could be a sale. Could be a merger. Could be  
22 a big acquisition. Joint ventures. You know, really any  
23 type of major corporate transaction that could have a  
24 significant impact on the value of the stake.

25 Q And the equity plan, I take it, you are referring to a

1 discussed if we would do a final report and what the scope of  
2 that would be, we would have to discuss that with our client,  
3 but we might do a discounted cash flow right in advance of  
4 the IPO to see if the ranges implied by the IPO were  
5 reasonable. We haven't discussed whether we would do that or  
6 not do that with our client.

7 Q Once the IPO happens, presumably the valuation is established  
8 by the market; is that right?

9 A That's correct.

10 Q And so at that point predictions, however valuable they may  
11 have been before the event, are sort of mooted by what  
12 ultimately comes out of the IPO once it hits the market;  
13 right?

14 A When you say the predictions are mooted, I'm not sure what  
15 you are saying.

16 Q I'm sorry. The predictions don't have any value at that  
17 point except maybe by educating you as a way to make  
18 predictions in the future, the value will be that which is  
19 established by the market, not that which somebody might have  
20 predicted before the offering?

21 MR. HAMJE: I'm going to object as to form. You've  
22 asked I think three questions there.

23 Q (By Mr. Mitchell) I'm sorry, is that question confusing,  
24 Mr. Koplovitz?

25 A A little bit, sorry.



1 be receptive to an IPO by a company such as Premera?

2 A You are saying today, at this moment in time or...

3 Q Yes.

4 A Yeah, I think, you know, Premera, based on what we've seen is  
5 a good candidate to do a public offering. It seems it's  
6 about the right size. It seems - has a lot of attractive  
7 qualities. It's had a good growth trajectory over the last  
8 few years. The market for these companies is still pretty  
9 good.

10 Q The next bullet I think remarks on the fact that there have  
11 been some planned IPOs or conversions that have sort of run  
12 off the rails in the last year or so.

13 A Yeah.

14 Q And you say it's not clear what impact that will have on the  
15 investment community's appetite for companies in this space;  
16 is that right?

17 A Yeah.

18 Q Again, as sort of a simple person, it would seem to me that  
19 diminished supply would tend to mean a generally increased  
20 price for the companies on offer, would it not?

21 A You know, that's possible, and that's why we say it's  
22 unclear. But I think one important factor is consolidation  
23 and the ability for these companies to continue to  
24 consolidate. And if you only have one or two public  
25 companies out there, and it's very hard to buy other

1 and take it into account in the price of its shares?

2 A. Either that would happen or it's possible that after the  
3 offering, you know, there could be a negative tax ruling or a  
4 negative tax investigation, and that could leak out into the  
5 market and we could still own - we, the foundation, could  
6 still own a big chunk of the stock, and that could hurt the  
7 stock. So either investors could pick up on this issue and  
8 factor it into their calculations of what the stock is worth,  
9 or something could happen which would trigger a downward  
10 movement in the stock after the IPO.

11 Q Okay. Do you have any sense of what the timing of that  
12 development might be?

13 A Not really.

14 Q Okay.

15 A I mean it's a tax issue, so once the tax year is closed. But  
16 to me - it's an ongoing deduction, so I don't think it would  
17 be closed at any point. I think they could continue - there  
18 would be open tax years which this issue relates to.

19 Q Okay. Then your second bullet suggests that if Premera were  
20 to lose the blue mark, its valuation would likely be  
21 meaningfully impacted. Can you explain this risk, please.

22 A One thing we were asked to look at is how important is the  
23 mark. Because I guess you could think of some transactions  
24 that the company could do where they could do the deal and it  
25 might be an alternative to an IPO but they might lose the

1 mark. And our view was that the mark is very important, and  
2 losing the mark would be very damaging to the company and its  
3 business.

4 Q So, would it be a correct conclusion from that observation  
5 that the company should be very careful to do everything it  
6 can to avoid losing the mark?

7 A Yes.

8 Q That brings me to page 10 of your report. And it appears we  
9 are moving here from a discussion of valuation issues to a  
10 focus on the transaction documents.

11 A That's correct.

12 Q Again you have a box at the top of the page, which is sort of  
13 your top-line conclusion.

14 A Mm-hmm.

15 Q And you note in your first sentence that "There are several  
16 aspects of the transaction that are either incomplete or  
17 inconsistent with recent BCBS conversions." My first  
18 question to you is the observation that there are aspects of  
19 the transaction there are incomplete. From reading your  
20 report, it appears that what you are referring to here is the  
21 absence of a detailed stock plan and the provision to you of  
22 an exhibit that sets forth certain limitations on any stock  
23 plan that might be adopted; right?

24 A That is correct.

25 Q So, now that the stock plan has been submitted, and I believe

C E R T I F I C A T E

I, PAMELA J. KLESSIG, a duly authorized Court Reporter and Notary Public in and for the State of Washington, residing at Olympia, do hereby certify:

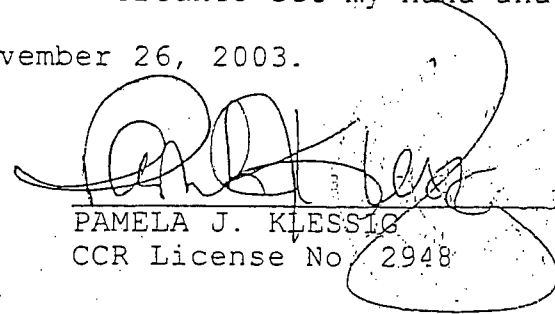
That the foregoing deposition of JONATHAN KOPLOVITZ was taken before me on the November 20, 2003 and thereafter transcribed by me by means of computer-aided transcription, that the deposition is a full, true and complete transcript of the testimony of said witness;

That the witness, before examination, was by me duly sworn to testify the truth, the whole truth and nothing but the truth, and that the witness RESERVED signature.

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That upon completion of signature, if required, I shall herewith securely seal the original deposition transcript and serve the same upon MR. ROBERT B. MITCHELL, counsel for the PREMERA and Premera Blue Cross.

IN WITNESS HEREOF, I have hereunto set my hand and affixed my official seal this November 26, 2003.

  
PAMELA J. KLESSIG  
CCR License No. 2948

BEFORE THE INSURANCE COMMISSION  
OF THE STATE OF WASHINGTON

In the Matter of the Application  
Regarding the Conversion and  
Acquisition of Control of Premera Blue  
Cross and its Affiliates

NO. G 02-45

**COPY**

DEPOSITION UPON ORAL EXAMINATION OF

JONATHAN KOPLOVITZ

Day 2 of 2  
Pages 216-427  
November 21, 2003  
Seattle, Washington

Taken Before:

PAMELA J. KLESSIG, RPR, CCR No. 2948  
Registered Professional Reporter  
of  
CAPITOL PACIFIC REPORTING, INC.  
2401 Bristol Court S.W.  
Olympia, WA 98502  
Phone: 360/352-2054  
Fax: 360/754-4240  
Toll Free: 1-800-407-0148  
e-mail: capitol@callatg.com



1 company that's a public company is represented in its  
2 outstanding stock?

3 A When you say "its outstanding stock," I'm not sure what you  
4 mean.

5 Q It was not a very good question. Let me try it again.

6 Would you agree with me that the value of a publicly  
7 traded company is accurately reflected in the value of the  
8 shares of stock that it has outstanding?

9 A To a specific shareholder or...

10 Q No, in the aggregate.

11 A In the aggregate, if you were to try and value a company, the  
12 entire equity of the company, you would take the total shares  
13 and multiply that by the share price, that's correct. And  
14 then also take into account options.

15 Q And if you did that exercise, would you expect to capture the  
16 entire value of the company in that calculation?

17 A You would be measuring the market value. Whether that's the  
18 intrinsic value or not, you know, difficult to say. But you  
19 would be measuring the market value of the shares as of that  
20 date, which is probably as good of a proxy as any for the  
21 value of a company.

22 Q Are you aware of any instances in which a company has been  
23 told that its value exceeds 100 percent of the initial issued  
24 stock?

25 A Sure.

1 A Sure, there's differences between buyers and sellers and  
2 that's what makes markets.

3 Q I want to talk a little bit about uses for equity capital by  
4 companies that are going to market. Would you agree that  
5 most public companies that issue S-1s state that the capital  
6 is going to be used for general corporate purposes?

7 A I think that's fairly common.

8 Q And what does that phrase mean to you?

9 A I think it could mean a lot of things. It could mean capital  
10 spending. It could mean, you know, various growth  
11 initiatives. Sometimes even though it will say corporate  
12 purposes including acquisitions, it could be acquisitions.  
13 So it could mean a lot of things.

14 Q Is it a fairly common phenomenon that you see more  
15 specificity in the potential uses of the capital to be raised  
16 provided in the course of the road show?

17 A Potentially.

18 Q Is it fairly common that a company might raise capital to  
19 position it for future growth?

20 A Yes, it might raise some capital to do that.

21 Q And in the context of going to market to raise capital, is it  
22 a fairly common phenomenon that a company is looking for  
23 greater financial resources than it otherwise would have?

24 A I'm sorry, can you repeat that?

25 Q Sure. Is it fairly common that a company goes to market

1 seeking greater financial resources than it otherwise would  
2 have to pursue its plans?

3 A There are many examples of that, yes.

4 Q Is it also fairly common that a company would go to market in  
5 order to be able to withstand unplanned events, downturns,  
6 financial distress, even?

7 A Well, that one may be less so. I mean, you certainly  
8 wouldn't want to communicate that to people that you were  
9 expecting some unplanned negative events and that's why  
10 you're raising capital. But you know, it's prudent to have a  
11 little bit of money set aside or capital set aside in case  
12 things don't go your way. That could very well be prudent.

13 Q In the insurance industry isn't there something known as the  
14 underwriting cycle that suggests that periodically, despite  
15 your best efforts, you're not going to do quite as well as  
16 you'd hoped?

17 A That's correct.

18 Q And can you explain the underwriting cycle, please?

19 A Well, I think when, you know, as profits - you know, it's  
20 basically just a question of supply and demand and having  
21 more profitability when times are good and pricing is firm,  
22 and then when pricing is not as good, you know, having less  
23 profitability. So it's cyclical like a lot of industries are  
24 cyclical.

25 Q Have you witnessed efforts in other areas of insurance



1 A That's correct.

2 Proprietary Material  
3 Redacted

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14 Proprietary Material  
15 Redacted

16 A Yes, as I said testified earlier, we think some additional  
17 capital and also access to capital could be a good thing for  
18 this company.

19 Q Do you have a judgment, Mr. Koplovitz, as to what would be a  
20 reasonable target for an RBC ratio for a Blue Cross/Blue  
21 Shield company?

22 A I think it depends on the company.

23 Q Do you have a range that you would think would be prudent to  
24 shoot for?

25 A I wouldn't want to specify a range, a generic range.

1 wasn't capital constrained in its initiatives, that you know,  
2 in their forecasts RBCs are improving. I think you would  
3 just need to get people comfortable that there's not a  
4 balance sheet issue here.

5 Q Would you not agree with me, Mr. Koplovitz, that were Premera  
6 to wait to come to market until it had suffered some setbacks  
7 such that its RBC ratio was actually lower than it is now,  
8 that that would be a more negative factor, a potentially much  
9 bigger negative factor?

10 A I would agree with that.

11 Q Indeed, you don't want to go to market when your need for  
12 capital is acute, do you, you want to go when you have a  
13 positive story to tell?

14 A I would say yes, but I would just make one caveat, and that  
15 is the strength of the market you're selling into is  
16 sometimes just as important as the story. So, you know, you  
17 might have a situation where the company's fundamentals  
18 aren't good but the investor appetite for that sector is very  
19 strong. And so, you know, all else equal you could have a  
20 period where the company's performance maybe isn't good but  
21 people just want to buy those types of stocks.

22 Q We witnessed a bubble, I think --

23 A Yes, that's correct.

24 Q But putting aside that for the moment and assuming that the  
25 market conditions are the same in one circumstance versus

1 stock at this point; right?

2 A Correct.

3 Q Have you seen anything since this report was published that  
4 would suggest that these trends had been reversed?

5 A No.

6 Q On the top of page 40 there's a bullet that says "Over the  
7 past three years, the new-issue market has increasingly  
8 focused on more traditional business models." Can you tell  
9 me what you mean by "more traditional business models"?

10 A I think what we were saying here was in '99 and 2000 it was a  
11 lot of, you know, technology, businesses, telecom businesses  
12 that maybe didn't have an earnings track record but were more  
13 of conceptual businesses. And --

14 Q Great ideas?

15 A Great ideas. And in the past the IPO market was really more  
16 for established companies, and those types of companies would  
17 be funded more through like venture capital. So I think the  
18 market has, since that time, at this point is just saying  
19 that the market has returned to kind of more traditional type  
20 businesses with real earnings and real strategic plans.

21 Q So the market now, in evaluating potential IPO, looks for a  
22 track record, not just a business plan; is that right?

23 A Overall I would say that's a trend since 2000. Although, you  
24 know, very recently I think tech stocks have - like, for  
25 instance, this year tech stocks have done well and now some

1 of these Internet stocks are starting to think about going  
2 public again. So it may be that there are some tech, but  
3 this is a broad point covering, you know, from 2000 to today.  
4 If you look at that period it's more traditional business  
5 models.

6 Q Would I be correct in inferring from your prior answer that  
7 an insurance company, one that has a long track record, would  
8 fall within the category of a traditional business model?

9 A Yes.

10 Q Then you observed, I think in the second main bullet on  
11 page 40, that "Investors are focusing on the fundamentals,"  
12 transparency, profitability, cash flow, rising returns,  
13 sector leadership, high-quality management. Those are things  
14 that the investors are now examining to determine whether  
15 they want to invest in an IPO?

16 A Correct.

17 Q And it is the case, is it not, that Premera is strong on all  
18 of these fundamentals?

19 A I would say that Premera scores well in these categories.

20 Q I want to turn over to page 41 now, if I might, and this  
21 continues I think your analysis of the market for IPOs. And  
22 you observe in the box at the top of the page that "While  
23 IPOs have declined recently in terms of number and volume  
24 from highs in 1999 and 2000, the recent IPOs of such  
25 insurance and healthcare companies as Axis, Capital Holdings

1 A I think we're thinking about both. We're thinking about kind  
2 of this balancing act between the company on one hand and the  
3 foundation shareholder as the owner on the other. I think  
4 this report approaches it, at least this first question,  
5 maybe more from the company's perspective. But there are  
6 points later where they do look at the foundation  
7 shareholders, so...

8 Q Okay. Anything else strike you about the questions or the  
9 way that they're laid out in the introduction that is  
10 troubling?

11 A No.

12 Q Let's pass over the qualifications and look at the Executive  
13 Summary if we can. The first paragraph of the Executive  
14 Summary talks about reasons to raise capital and identifies  
15 two broad reasons. Do you agree with that assessment?

16 A Yes.

17 Q And the second sentence says "Companies are better able to  
18 raise capital when they are in a strong financial position."  
19 I take it from your testimony earlier that you agree with  
20 that as well?

21 A Yes.

22 Q Third sentence, "Successful companies often raise capital  
23 before an actual specific need arises in order to achieve  
24 strategic flexibility." Do you agree with that?

25 A That is true, yes.

- 1 maybe there's more in the back, but there's no discussion of  
2 the magnitudes, you know, the fact that there's no discussion  
3 of kind of the magnitudes of cash. So right now it's very  
4 conceptual and it's at a very high level, but I think at some  
5 point you need to bring it down and talk about how much is  
6 appropriate. And you know, so the fact that WellChoice  
7 raised \$30 million in their IPO, you know, does that mean  
8 Premera should raise 100 - you know what I'm saying? So  
9 that's - conceptually these statements make sense but when  
10 you dig into the details, that's really where our problem is.
- 11 Q Okay. So, we're dealing here, it appears, in the Executive  
12 Summary at a conceptual level?
- 13 A Yes, so maybe later we'll get into some of the details.
- 14 Q The next sentence says "Without access to the public markets  
15 and without financial flexibility, nonprofit companies, such  
16 as Premera, have limited options when capital is needed most,  
17 including times of financial burden, or to support additional  
18 growth opportunities."
- 19 A Again, I think this is consistent with some of the things we  
20 talked about earlier.
- 21 Q Then the next paragraph picks up, says "Completing an IPO is  
22 the most effective way in which Premera is likely to be able  
23 to raise additional material capital to increase strategic  
24 flexibility." Do you agree with that?
- 25 A I think that's reasonable.

1 Q That would be great.

2 A Okay.

3 Q Would you please give me your observations with respect to  
4 the second topic addressed here?

5 A As I think we have discussed today, we believe that Premera  
6 would be an attractive public company, and I think we went  
7 through the benefits of Premera as a public company.

8 Q So you would concur with the conclusion that appears at the  
9 bottom of page six of this report?

10 A Yes, we think Premera would be an attractive public company.

11 Q The third question addresses the "proposed transaction  
12 structure and terms" and whether they would "be acceptable to  
13 investors." Do you have any general observations with  
14 respect to this topic?

15 A Yes. I think our observation here is that they've lumped  
16 WellPoint, RightCHOICE and WellChoice together, saying that  
17 the terms and structure are similar, but you know, I think  
18 our read of the documents is that WellChoice may be - it's  
19 not as - you know, it's not as good as WellChoice. So, and  
20 they're looking at it from the investor's perspective. But I  
21 think lumping these three together and saying our terms are  
22 similar, I think WellChoice's are better from the  
23 foundation's perspective than what Premera has proposed.

24 Q So, if I understand correctly what you're saying, you used  
25 WellChoice as your touchstone in looking at these terms

1 vote on.

2 The other thing here is on the demand registration  
3 rights they really haven't covered, you know, all of the  
4 abilities to block demand registration rights, which is some  
5 of the things that we talked about yesterday. And again, I  
6 think on some of those items, which are very important, you  
7 know, Premera may be out of line, definitely with WellChoice  
8 and potentially with the other guys; I'd have to take a look  
9 at that.

10 Q Let me ask this question. Again, this may be a difference of  
11 perspective from which the transaction is being viewed. The  
12 conclusion drawn by Banc of America at the top of 23 is that  
13 because "Premera's proposed transaction structure and terms  
14 are similar to those of WellPoint, RightCHOICE and  
15 WellChoice," taken as a whole I gather, they "are likely to  
16 be acceptable to the investment community." Would you agree  
17 with that?

18 A I would agree with the second part of that sentence, and the  
19 first part I might just take out WellChoice, and then I'd  
20 feel more comfortable with the sentence. Or soften it a  
21 little with respect to WellChoice.

22 Q And your perception is that from the standpoint of a  
23 foundation shareholder, the transaction structure would be  
24 more agreeable if it resembled WellChoice more than the  
25 others; right?



1 A I think that's what I testified, yes.

2 Q Yeah. And there's a discussion, and it begins on the top of  
3 page 23, about divestiture. And do you have any observations  
4 with respect to that discussion?

5 A No, I think it looks - distributing the shares in an orderly  
6 fashion is important, I would agree with that.

7 Q And I think table - excuse me, chart 3.1 on page 24 is an  
8 illustration of what WellPoint did. Does that look right to  
9 you?

10 A Yep. I mean I have no way of knowing. I'm assuming it's  
11 right.

12 Q Okay. Then the top of page 25, the text picks up again, and  
13 it observes that "In order to minimize stock price pressure  
14 during the foundation shareholder's liquidation and  
15 distribution of shares, it is important for the distribution  
16 to be managed in an organized fashion." And I take it you  
17 agree with that?

18 A Yes.

19 Q Are you familiar with the AMERIGROUP and Centene companies  
20 that are discussed --

21 A No. I mean, I'm not familiar with this case - I mean, I read  
22 it but I didn't confirm - I mean, I understand what they're  
23 saying.

24 Q Intuitively it suggests that disorganized disposition of  
25 shares by large shareholders can cause downward pressure on

C E R T I F I C A T E

I, PAMELA J. KLESSIG, a duly authorized Court Reporter and Notary Public in and for the State of Washington, residing at Olympia, do hereby certify:


That the foregoing deposition of JONATHAN KOPLOVITZ, was taken before me on November 21, 2003 and thereafter transcribed by me by means of computer-aided transcription, that the deposition is a full, true and complete transcript of the testimony of said witness;

That the witness, before examination, was by me duly sworn to testify the truth, the whole truth and nothing but the truth, and that the witness RESERVED signature.

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That upon completion of signature, if required, I shall herewith securely seal the original deposition transcript and serve the same upon MR. ROBERT B. MITCHELL, counsel for PREMIERA and Premiera Blue Cross.

IN WITNESS HEREOF, I have hereunto set my hand and affixed my official seal this November 26, 2003.

  
PAMELA J. KLESSIG  
CCR License No. 2948

BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF WASHINGTON

In the Matter of the Application  
Regarding the Conversion and  
Acquisition of Control of Premera Blue  
Cross and its Affiliates

NO. G 02-45

**COPY**

DEPOSITION UPON ORAL EXAMINATION OF

JONATHAN KOPLOVITZ

March 8, 2004  
Seattle, Washington

Taken Before:

PAMELA J. KLESSIG, RPR, CCR No. 2948  
Registered Professional Reporter  
of  
CAPITOL PACIFIC REPORTING, INC.  
2401 Bristol Court S.W.  
Olympia, WA 98502  
Phone: (360) 352-2054  
Fax: (360) 754-4240  
Toll Free: 1-800-407-0148  
e-mail: capitol@callatg.com



1 Q Could you turn please to the voting trust and divestiture  
2 agreement, which is Exhibit G-4 to the amended Form A2

3 A Yes.

4 Q You're familiar with this document too, I take it?

5 A Yes.

6 Q And would you take a moment, please, to look through the  
7 recitals to the document, which appear on pages two and  
8 three. And my question to you as you read those is this: Do  
9 you have any concerns about these recitals?

10 A (Perusing.)

11 MS. BAXTER: I'm sorry to interrupt, this is Kathy  
12 Baxter. Is Amy back on the call?

13 MS. McCULLOUGH: Yes, I am.

14 MS. BAXTER: Oh, terrific. Okay.

15 A Okay. I believe our concerns in this document are outlined  
16 in our report, and to the extent things are repeated in the  
17 recitals, obviously that would be an issue. But the one  
18 thing I noticed is this 80 percent after one year, that's one  
19 thing that we did identify in our report. I don't know if  
20 there's anything else that pops to mind. Do you have  
21 something specific?

22 Q (By Mr. Mitchell) Indeed there is, Mr. Koplovitz. Could you  
23 focus on the third recital for a moment, please?

24 A Okay.

25 Q My question to you is, do you agree with the third recital?

1 A Yes.

2 Q You agree that the company's license to use the marks, which  
3 is a defining term, may contribute substantially to the  
4 company's value and its future prospects?

5 A Yes, it may contribute substantially to the value and  
6 prospects of the company.

7 Q And the fourth recital indicates that the "company desires to  
8 assure the continuity of corporate policy and management and  
9 provide stability in the capital markets with respect to  
10 liquidity and divestiture of its capital stock." Do you see  
11 that?

12 A Yes.

13 Q Do you agree that that is a salutary goal?

14 A Well, I agree that providing "stability in the capital  
15 markets with respect to liquidity and divestiture of its"  
16 stock, that is something that should be - the company should  
17 strive for that. But the first part, "assure the continuity  
18 of corporate policy and management," I'm not quite sure what  
19 that means.

20 Q Your expertise obviously lies in the --

21 A The latter area, that's correct.

22 Q And with respect to that you agree with the goal and the - do  
23 you also agree that a voting trust agreement can have a  
24 salutary effect in terms of providing stability in the  
25 capital markets with respect to the liquidity and divestiture

1 of the capital stock of a converting company?

2 A Yes.

3 Q Would you grab behind you, Mr. Koplovitz, volume one of the  
4 Form A amendments. I want to ask you to turn to Exhibit B-1,  
5 the Articles of Incorporation for New Premera.

6 MS. McCULLOUGH: Rob, did you say B1 or E1?

7 MR. MITCHELL: B as in boy.

8 MS. McCULLOUGH: Thank you.

9 Q (By Mr. Mitchell) Exhibit B-1 is the Articles of  
10 Incorporation for New Premera; is that right?

11 A Yep.

12 Q And article two of the Articles of Incorporation describes  
13 the capital stock of New Premera as existing - as consisting  
14 of 90 million shares of common stock, one share of class B  
15 common, and 10 million shares of preferred; right?

16 A Right.

17 Q Can you explain the function of the class B common stock?

18 A I believe it's to prevent dilution to the foundation  
19 shareholder.

20 Q Can you explain that a little bit, please?

21 A Well, it would just give the foundation shareholder ability  
22 to not get diluted by new equity offerings.

23 Q Now, am I correct in my understanding, Mr. Koplovitz, that  
24 the B share, as it's called, is outside of the voting trust  
25 agreement?

1 C E R T I F I C A T E

2 I, PAMELA J. KLESSIG, a duly authorized Court Reporter  
3 and Notary Public in and for the State of Washington, residing at  
4 Olympia, do hereby certify:

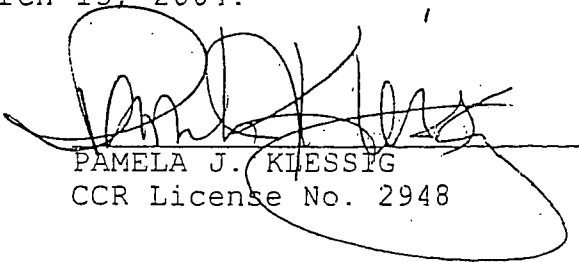
5 That the foregoing deposition of JONATHAN KOPLOVITZ  
6 was taken before me on the 8th of March 2004 and thereafter  
7 transcribed by me by means of computer-aided transcription, that  
8 the deposition is a full, true and complete transcript of the  
9 testimony of said witness;

10 That the witness, before examination, was by me duly  
11 sworn to testify the truth, the whole truth and nothing but the  
12 truth, and that the witness RESERVED signature.

13 That I am not a relative, employee, attorney or  
14 counsel of any party to this action or relative or employee of  
15 any such attorney or counsel, and I am not financially interested  
16 in the said action or the outcome thereof;

17 That upon completion of signature, if required, I  
18 shall herewith securely seal the original deposition transcript  
19 and serve the same upon MR. ROBERT B. MITCHELL, counsel for  
20 Premera and Premera Blue Cross.

21 IN WITNESS HEREOF, I have hereunto set my hand and  
22 affixed my official seal this March 15, 2004.

23  
24   
25 PAMELA J. KLESSIG  
CCR License No. 2948

1 BEFORE THE INSURANCE COMMISSIONER  
2 OF THE STATE OF WASHINGTON  
3

4 In the Matter of the Application  
5 regarding the Conversion and  
6 Acquisition of Control of Premera Blue  
7 Cross and its Affiliates.

**COPY**

No. G 02-45

Day 1 - Pgs 1-221

8  
9 DEPOSITION UPON ORAL EXAMINATION OF

10 MARTIN ALDERSON-SMITH

11 November 24, 2003  
12 Seattle, Washington

13  
14  
15 Taken Before:

16 SUE E. GARCIA, CCR, RPR  
17 Certified Court Reporter  
18 of  
19 CAPITOL PACIFIC REPORTING, INC.  
20 2401 Bristol Court S.W.  
21 Olympia, WA 98502  
22 360.352.2054  
23 e-mail: [capitol@callatg.com](mailto:capitol@callatg.com)  
24 [www.capitolpacificreporter.com](http://www.capitolpacificreporter.com)  
25



1 transaction -- excuse me -- your review of the CareFirst  
2 proposed transaction, one of the things that you were asked  
3 to do specifically was to determine whether the value that  
4 was proposed to be paid by the acquiring entity was  
5 appropriate and that by conducting an independent evaluation  
6 of CareFirst; is that right?

7 A That's correct.

8 Q I gather that you did not have the same assignment in this  
9 case. Can you tell me a little bit about that?

10 A We did not or were not in a position to determine whether a  
11 value that had been put on the table was fair in the case of  
12 Premera partly because at the moment there is no assigned  
13 value for Premera. Premera will achieve a value through an  
14 IPO, through a going public process; and therefore, there is  
15 not a specific value on the table that we can look at and  
16 decide whether that particular value is fair or not. And  
17 that is probably the -- you know, another important  
18 difference between the two cases. Whereas, in the CareFirst  
19 situation a value had been put on the table by WellPoint.

20 Q Are you satisfied, Mr. Alderson-Smith, that the value to be  
21 established by the market upon the initial public offering of  
22 Premera will, in fact, establish its value?

23 A I am -- I'm comfortable that a properly and appropriately  
24 marketed IPO process -- in other words, a process that  
25 ensures that investors are adequately informed about Premera,

1 a process that allows for all of the benefits of Premera to  
2 be clearly identified to a wide array of potential investors,  
3 and a process where effectively all of the company  
4 representatives and their advisors work in a way that is  
5 customary with such IPOs -- that as a result of that process  
6 being properly carried out and properly marketed that an  
7 appropriate value would be identified for the Premera  
8 company. Yes.

9 Q Mr. Alderson-Smith, what would you describe as your area or  
10 areas of expertise?

11 A May I ask, with regard to this specific project or with  
12 regard to my overall time at Blackstone?

13 Q I'm sorry. I would say with respect to this particular  
14 project.

15 A My area of expertise with regard to this project has been  
16 particularly to examine the transaction documents that have  
17 been proposed by Premera, and to look at those transaction  
18 documents relative to other conversions of other Blue Cross  
19 Blue shield companies and also other life insurance  
20 companies, and to determine whether, in fact, there are areas  
21 that could be potentially improved for the benefit of the  
22 foundation shareholder without undue harm to any of the other  
23 interested parties.

24 Q And then more generally, can you tell me what you regard as  
25 your area or areas of expertise?

1       also looked at.

2           I think it's fair to say that there were a number of  
3       areas of agreement. There were -- clearly Banc of America,  
4       just like Blackstone, sees that there is a question of  
5       balance in terms of what is appropriate -- what is most  
6       appropriate or in the best interests of the foundation may  
7       not necessarily be in the best interests of the company or  
8       the new investors. So that is -- was an area of potential  
9       agreement.

10          There were also a number of areas where we felt that the  
11       Banc of America report did not go into significant detail or  
12       did not really dig into areas where we feel that there may be  
13       problems or issues. For example, in the area that I was  
14       specifically looking at, which is the -- the potential  
15       deficiency or the potential problems in the transaction  
16       documents, the Banc of America report seemed to indicate  
17       because most of those areas were in line with precedent  
18       transactions that they would therefore be acceptable. And  
19       clearly we perhaps went into a little bit more detail in  
20       terms of looking at very specific elements that we may have  
21       problems with.

22          So I would say that there were some areas of agreement  
23       and some areas where we feel that there was, perhaps -- by  
24       digging into detail, there was perhaps some areas where we  
25       would disagree.

1 ability to raise equity capital, both at the time of the IPO  
2 and also at future times, to fund capital needs for the  
3 business. And there are, therefore, a number of benefits to  
4 that. There are also obviously some risks. And we've tried  
5 to look at both the risks and the benefits.

6 The issue that concerns us, therefore, is not the  
7 benefits of gaining access to the capital markets and the  
8 benefits of receiving some quantity of capital at this time.  
9 I think the main area of debate that we may have is how much  
10 capital should one bring into the company, particularly if it  
11 cannot be redeployed at acceptable rates of return in the  
12 sort of near to medium term.

13 Q (By Mr. Mitchell) So my simplistic understanding would be  
14 that your concern here is not so much the need for capital  
15 but the amount proposed to be raised initially; is that  
16 right?

17 A That is correct.

18 Q Has Blackstone ever advised a company that it was doing work  
19 for to seek an infusion of capital at a time at which there  
20 is not an obvious need for such capital?

21 A Blackstone has advised various clients to go and raise  
22 capital when there isn't an immediate need. Also, Blackstone  
23 in its own account has taken a large number of its own  
24 companies public and had access -- had them access the  
25 capital markets at times when there wasn't an immediate need

1 for that capital.

2 Q what's the rationale for both that action and that advice?

3 A The primary -- well, there are a number of reasons for that.  
4 Probably the first one is, if the capital markets are open,  
5 and if capital can be obtained cheaply, then often it is a  
6 good idea to go out into the markets and raise some capital  
7 which can be put into some sort of account for use when it's  
8 needed.

9 The capital markets are very volatile; and therefore,  
10 it's not always able to access those capital markets; they  
11 could be shot for long periods of time. If it is an  
12 appropriate time to raise some amount of capital, then that  
13 opportunity often should be taken advantage of. So that is  
14 sort of one side of the equations.

15 And obviously the hope would be that projects or  
16 acquisition or uses for that capital can be identified at  
17 least within -- you know, within the foreseeable future. And  
18 if it can't be identified within the foreseeable future,  
19 clearly there is a tradeoff between, you know, how much money  
20 one should raise, which may have to be deployed at quite low  
21 rates of return, versus the risk of not raising enough money  
22 and then, when capital markets are closed, one actually  
23 having a need for the money, which then may be very expensive  
24 to raise.

25 Q It seems a little bit ironic. But sometimes is it not the

1 case that you're better able to raise capital when you're  
2 need is not acute than when it is acute?

3 A This is probably true.

4 Q And you would not advise a client, would you, to wait until  
5 its capital needs were pressing before going to the equity  
6 markets?

7 MR. NICEFARO: Objection; vague.

8 THE WITNESS: We would generally advise clients to  
9 be opportunistic as it regards to the capital markets in  
10 terms of, if there is a foreseeable need for capital, that  
11 the company goes out and uses the most opportune time and the  
12 cheapest price to raise capital.

13 Q (By Mr. Mitchell) would you not say that this is a relatively  
14 opportune time to raise capital for a healthcare company such  
15 as Premera?

16 A Right now in the, sort of, fourth quarter of 2003 seems to be  
17 quite a good time to raise capital for various Blue Cross or  
18 other health insurance companies.

19 Q And there are periods, I take it, that recur from various  
20 points in the market cycle, either because of general market  
21 trends or because sectors fall out of favor, when it is not a  
22 particularly good time to raise capital for such a company;  
23 is that correct?

24 A That is correct.

25 Q I think in the third note -- excuse me -- third bullet under

1 the first issue here, Mr. Alderson-Smith, you note that  
2 Premera's RBC level is low relative to most other Blue Cross  
3 Blue Shield plans, correct?

4 A We do see that -- I do see that.

5 Q Indeed it is the fourth lowest among all Blue Cross Blue  
6 Shield organizations; isn't that right?

7 A I'm not sure where it ranks, but I know it ranks down in the  
8 sort of bottom quarter anyway.

9 Q And you note that the company's RBC ratios would be improved  
10 through an IPO. Can you explain how that would function?

11 A Well, if the IPO was of primary shares, not of -- pardon  
12 me -- of shares that were being sold by the company so the  
13 proceeds would then flow back to the company. So those  
14 proceeds would then bolster the surplus and reserves of the  
15 company, which would allow for the RBC ratio to rise.

16 Q And did you determine to what extent the RBC ratio would rise  
17 if Premera were authorized to raise as much capital as it  
18 proposes to here?

19 A I believe that Mr. Koplovitz has done some work in that area,  
20 yes.

21 Q I want to turn over to page 7, if I might. And there's a  
22 heading at the top of the page "Alternative Sources of  
23 Capital," which talks about things that might be done other  
24 than accessing the equity capital markets to raise some  
25 capital ranging from debt to surplus notes to sale/leaseback

1 ability to have some -- to have some control over that  
2 package of value, and it's -- and some control over the  
3 disposition of that block of stock.

4 Q So when you came at the issue of fairness, as I understand  
5 it, you looked to the value received by the foundation which,  
6 I take it, can be expressed in monetary terms.

7 A Yes.

8 Q Secondly, to the degree to which the foundation can exercise  
9 control over its primary asset, that being the shares; and  
10 thirdly, the ability of the foundation to dispose of its  
11 shares in -- with the requisite degree flexibility; is that  
12 right?

13 A I think these are the main elements, yes.

14 Q Are there any others that we're missing here?

15 A None that come to mind right now.

16 Q I think you testified this morning that there's a certain  
17 amount of tension among these various objectives, for  
18 example, restraints on the ability of the foundation  
19 shareholder to dispose of its shares. There may actually be  
20 a diminution in value when it does dispose of them because of  
21 the perception in the market of this overhang problem; is  
22 that true?

23 A Yes. There are a series of tensions. And obviously the key  
24 is to get the balance right between flexibility and control  
25 by the foundation as opposed to maximizing the value to the



1 foundation. And those are -- those are somewhat at odds with  
2 one another.

3 Q And just to close the loop -- and this may have been implicit  
4 in your earlier answer. But it is the case, is it not, that  
5 the degree to which the foundation shareholder can exercise  
6 control over its shares, and by extension over the company  
7 that issued them, can in some ways and under some  
8 circumstances adversely affect the value of those shares if  
9 the market perceives the foundation shareholder's interests  
10 as not wholly aligned with the general markets?

11 A Yes. It may be that the foundation may be perceived as  
12 having different interests from the new investors that come  
13 in at the time of the IPO. And therefore, those new  
14 investors need to feel comfortable that the foundation is not  
15 going to do something that is, to those new investors, not  
16 economically rational or that is not economically beneficial  
17 to those new investors.

18 And therefore, there has to be some comfort given to the  
19 new investors that the foundation is not going to pursue a  
20 strategy that might be damaging to those new investors.  
21 Because if that assurance is not given, the value that those  
22 new investors will pay for those new shares in Premera could  
23 be less, which would also be a problem for the foundation.

24 Q Particularly given that there is a necessity of element of  
25 judgment that enters into how one balances these various

1 Q One of the things that, I take it, has been implicit in our  
2 discussion thus far of these various transaction terms and  
3 potential resolutions of the issues raised by them is that  
4 there be a single foundation shareholder. Has that not been,  
5 sort of, the going-in assumption as you've worked on these  
6 issues?

7 A Certainly as we wrote this particular report, we were  
8 reacting to the Form A documents. And those Form A documents  
9 had a supposition, to the best of my knowledge, that there  
10 would be one foundation shareholder. And so our comments  
11 here were using -- were following through on that same basic  
12 assumption.

13 Q Is this an example of where introducing a second foundation  
14 shareholder would introduce more complexity?

15 A It would certainly mean that we would have to revise some of  
16 these conditions and would have to look at some of these  
17 conditions anew. Because when you have two foundations  
18 that -- particularly two foundations that don't have some  
19 sort of common agreements to force them to work in tandem or  
20 in coordination, you could have a situation where those two  
21 foundations were competing in the whole area of disposition  
22 of their shareholding -- in their shareholdings, which could  
23 have deleterious effects on the overall market price of the  
24 shares and could also lead to uncertainty in the market, and  
25 which again, may be problematic from a market-price point of

1 view as well as from a general-company-perception point of  
2 view.

3 Q One -- going back to our operating assumption that there be  
4 one foundation shareholder, one alternative approach to this  
5 particular issue would be to permit the foundation  
6 shareholder to sell shares under Rule 144 provided only that  
7 there was sufficient public float after the IPO. That would  
8 be an alternative approach, wouldn't it?

9 A That would be.

10 Q The challenge would be to define what constitutes a  
11 sufficient public float?

12 A Correct.

13 Q Do you have a view as to the appropriateness of a sufficient  
14 public float criterion in the context of this particular  
15 issue?

16 A In terms of a range of, sort of, minimum public float, I have  
17 not got any sort of specific numbers at this time. However,  
18 that would be something that would be a relatively easy  
19 analysis to try and figure out, what the appropriate public  
20 float would be. And clearly other consultants, including  
21 those for Alaska, have indicated the appropriate size of a  
22 minimum public float as part of other portions of this study.  
23 Those certainly give us some indications of some of the  
24 numbers that might be within that range.

25 Q What have you heard that -- either from the Alaska

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C E R T I F I C A T E

I, SUE E. GARCIA, a duly authorized Court Reporter and Notary Public in and for the State of Washington, residing at Tacoma, do hereby certify:

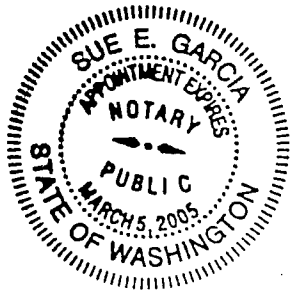
That the foregoing deposition of MARTIN ALDERSON-SMITH was taken before me on the 24th of November, 2003, and thereafter transcribed by me by means of computer-aided transcription, that the deposition is a full, true, and complete transcript of the testimony of said witness;

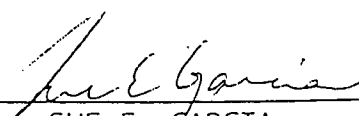
That the witness, before examination, was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth, and that the witness RESERVED signature;

That I am not a relative, employee, attorney, or counsel of any party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That upon completion of signature, if required, I shall herewith securely seal the original deposition transcript and serve the same upon ROBERT B. MITCHELL, counsel for PREMIERA.

IN WITNESS HEREOF, I have hereunto set my hand and affixed my official seal this December 3, 2003.



  
SUE E. GARCIA  
WA Lic. No. 2781

1 BEFORE THE INSURANCE COMMISSIONER.  
2 OF THE STATE OF WASHINGTON  
3

4 In the Matter of the Application  
5 regarding the Conversion and  
6 Acquisition of Control of Premera Blue  
7 Cross and its Affiliates.

**COPY**

No. G 02-45

Day 2 - Pgs 222-340

8  
9 DEPOSITION UPON ORAL EXAMINATION OF

10 MARTIN ALDERSON-SMITH

11 November 24, <sup>25</sup>2003  
12 Seattle, Washington

13  
14  
15 Taken Before:

16 SUE E. GARCIA, CCR, RPR  
17 Certified Court Reporter  
18 of

19 CAPITOL PACIFIC REPORTING, INC.  
20 2401 Bristol Court S.W.  
21 Olympia, WA 98502  
22 360.352.2054

23 e-mail: [capitol@callatg.com](mailto:capitol@callatg.com)  
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25

1 which may be beneficial.

2 There is also from the Alaska point of view, which would  
3 generally be seen as the smaller of the foundations because  
4 they would receive a minority of the stock -- from their  
5 point of view there may be some benefit in controlling their  
6 own destiny in terms of deciding when and how to sell down  
7 their shareholding in Premera.

8 So for all of those reasons, we would see, from a --  
9 just from a purely financial point of view, financial  
10 flexibility and control point of view, there could be some  
11 benefits, perhaps particularly to Alaska, of having two  
12 foundations, each one controlling their own portion of  
13 Premera stock.

14 Obviously there were a number of disadvantages that we  
15 touched on yesterday, again, strictly from a financial point  
16 of view. And I would also say these comments are quite  
17 preliminary because we have not done significant homework on  
18 this item.

19 But in terms of, you know -- without a very clear  
20 arrangement between those two foundations, there is a risk  
21 that one would have, you know, potential for additional  
22 overhang or concerns about the market, that there would be  
23 stock being sold into the market in a less -- in a less  
24 organized manner, which may have an impact on the value of  
25 the stock -- that was certainly one of the potential

1       disadvantages that we discussed yesterday -- absent a very,  
2       very, clear agreement in terms of how and to what extent each  
3       foundation was going to be able to control the sell-down of  
4       their stock.

5   Q     But that issue of potential overhang could be resolved with a  
6       clear arrangement?

7   A     We believe that that could be resolved. But to some extent  
8       the more stringent the arrangement between the two  
9       foundations, the more, perhaps, some of the advantages that I  
10      talked about earlier become, you know, less significant. I  
11      mean, if you have a watertight shareholder's agreement, it's  
12      beginning to look like one foundation again.

13  Q     Understood.

14  A     But that is obviously just from a financial point of view  
15      because I have not even considered any of the public-policy  
16      issues.

17  Q     But there are additional public-policy considerations to  
18      make; is that right?

19  A     Maybe. Maybe not. I just don't know, to be perfectly  
20      honest.

21  Q     And as you're probably aware, one of the issues that had come  
22      up in this case is the issue of allocation of Premera's  
23      assets, either amongst the states involved, that is,  
24      Washington, Alaska, and Oregon, or between Washington and  
25      Alaska.

1 position, but you have doubts about the required amount of  
2 equity that is proposed to be raised in the IPO; is that  
3 right?

4 A That is correct.

5 Q If we could flip over to page 21, on page 21 the issue under  
6 discussion is the RBC ratio, right?

7 A Yes.

8 Q And can you describe very briefly why the RBC ratio is a  
9 relevant financial metric for a company such as Premera?

10 A The RBC ratio is a relevant metric because it indicates the  
11 financial strength, the claims -- ultimately the  
12 claims-paying ability of the company. And it is important  
13 for a whole host of reasons, including regulatory reasons,  
14 marketing reasons.

15 In other words, you'd want to generally ensure with a  
16 business that has a sound financial position that you know it  
17 will be able to pay -- make good on all legitimate claims.  
18 And therefore, for marketing reasons, for regulatory reasons,  
19 and also for BCBSA reasons, it is important to have a solid  
20 financial footing, which is often expressed as an RBC ratio.

21 Q Now, I believe that the report points out that Premera's RBC  
22 ratio is toward the bottom of all BCBS companies; is that  
23 right?

24 A That is correct.

25 Q

Proprietary Material  
Redacted



1 A That is correct.

2 Q I have one question, possibly two, relating to this section  
3 of the analysis. It comes on page 33 of your report. As I  
4 understand it, the positives and negatives here are some of  
5 the considerations that would enter into how the IPO was  
6 marketed; is that right?

7 A That is correct. And they would certainly have an impact on  
8 what we would feel may be the value of the company as an IPO.

9 Q One of the negatives listed here -- and it's the third bullet  
10 on the right-hand column -- is an indication that Premera's  
11 has a significantly lower RBC ratio than other BCBS plans,  
12 which we've discussed here today.

13 A We have.

14 Q You would agree, would you not, that if Premera waited until  
15 its RBC ratio were even lower than it is now, that that would  
16 be an even bigger negative at the point it needed to raise  
17 capital to boost the RBC; is that right?

18 A Yes. A lower RBC ratio would make capital raising a more  
19 difficult exercise.

20 Q And you would agree, therefore, that to the extent that RBC  
21 ratio is a concern to Premera, it's better to act at the  
22 point where its RBC is at this point rather than to wait  
23 until it's lower because of some unforeseen event; isn't that  
24 right?

25 MR. NICEFARO: Objection; calls for speculation;

1 assumes facts not in evidence.

2 THE WITNESS: Yeah. I think it's fair to say that  
3 if there was a view that the RBC would get lower, it would be  
4 better to raise money when an RBC is higher rather than  
5 lower.

6 Q (By Mr. Mitchell) The last negative listed here is a  
7 reference to the overhang given the foundation shareholdings  
8 shares and the obligation that the foundation shareholder has  
9 to divest itself of shares; is that correct?

10 A That is correct.

11  
12 Proprietary Material  
Redacted

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24 Proprietary Material  
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1 particular transaction?

2 A The opinion with regard to fairness was tailored taking into  
3 account various laws in Washington state as well as taking  
4 into account the obligations that we took on in accepting the  
5 assignment and signing the letter of engagement with the OIC.

6 Q How did the engagement that you had with the OIC inform your  
7 approach to the fairness opinion here?

8 A The engagement letter with the OIC indicated the nature of  
9 fairness and the -- who we had to look at in terms of this  
10 transaction being fair to, which was set out in our  
11 engagement letter.

12 Q And is that why you focused on the foundation shareholder  
13 principally in making your determination?

14 A That was one of reasons that we focused on the foundation  
15 shareholder, yes.

16 Q Would you agree that a value of a company that is publicly  
17 traded is represented by the value of its outstanding shares?

18 A The value of a company that is publicly traded is  
19 traditionally, yes, a -- the value the outstanding shares  
20 plus potentially any other securities or debt that may --  
21 that may accrue to other owners of capital outside the  
22 company. It's what we define as a "total enterprise value."

23 Q And the market basically serves to provide such a valuation,  
24 does it not, by the working of the willing seller/willing  
25 buyer model in trading the securities of that enterprise?

1 A That is correct.

2 Q Would you agree that most public companies that are going to  
3 market to raise capital state in their S-1 that the use of  
4 the capital is, quote, "general corporate purposes," close  
5 quote?

6 A A number of companies do state that a portion of the capital  
7 that is raised is for general corporate purposes. Sometimes  
8 they also indicate specific uses as well.

9 Q And why do they have such a proposed use of capital; do you  
10 know?

11 A "General corporate purposes" is a sort of catchall phrase for  
12 any number of uses. Some of those uses may be quite small.  
13 Some of those uses may not be immediate. And therefore,  
14 "general corporate purposes" is quite a nice phrase to -- as  
15 a catchall phrase to indicate that now is an opportune time  
16 to raise some money, but we don't necessarily know exactly  
17 how it's going to be deployed, and we don't know exactly when  
18 it's going to be deployed. Or it's going to be deployed into  
19 so many small buckets that we don't necessarily want to  
20 enumerate them in the S-1.

21 Q Could funds that are raised for general corporate purposes be  
22 used to position a company to move on to a steeper growth  
23 track?

24 A They could.

25 (Mr. Domeika exits.)

(Exhibit No. 18 through 27 marked  
for identification.)

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Q (By Mr. Mitchell) Mr. Alderson-Smith, I want to direct your  
attention first to Exhibit 18 to your deposition.

A Yes.

Q Which is a copy of the Banc of America Securities, LLC,  
report. I believe you told me yesterday that you'd read  
this.

A I have read this report.

Q And can you tell me, please, I guess, first in general terms  
what opinions, if any, you formed upon reading a report about  
it.

A I think the primary opinions were that it was a fairly  
general report, and its focus was on the acceptability and  
marketability of Premera's stock. I think that was the  
primary thrust of the report.

Q And with respect to its treatment of the marketability and  
acceptability of Premera's stock in the investment community,  
which I believe is taken up in the second question,  
principally, in the report --

A Yes.

Q -- do you have any significant difference of opinion with the  
Banc of America report?

A Without sort of going into the specifics, I don't think that

1       there are major areas of disagreement between myself and this  
2       report. I think it's fair to say that this report was a  
3       relatively high-level report and didn't necessarily go into  
4       great detail in some areas. But in general terms, I don't  
5       believe I had any huge disagreements with this report.

6   Q   The -- maybe we can focus on the executive summary to bring  
7       it down one level at least, Mr. Alderson-Smith. That begins  
8       on page 6 of the report.

9       The first question posed in this report is whether  
10      Premera's strategy of converting and accessing the public  
11      equity market is reasonable. And the conclusion reached is  
12      that, "It is reasonable for Premera to take advantage of its  
13      current financial position to access the public equity market  
14      to increase its strategic flexibility and execute its  
15      strategic objectives."

16      Do you agree or disagree with that conclusion?

17   A   In general terms I agree with that.

18   Q   Then we talked about the question of whether Premera will be  
19       an attractive investment. The conclusion reached by Banc of  
20       America is that, "Premera's rationale and metrics should  
21       satisfy investor expectations, taking into account past  
22       trends and current market conditions, and therefore, be  
23       viewed as an attractive investment."

24      Do you agree with that?

25   A   I do agree.

1 Q The third question posed in the Banc of America report is  
2 whether Premera's proposed transaction structure and terms  
3 will be acceptable to investors. The conclusion reached is  
4 that, "Premera's proposed transaction structure and terms are  
5 similar to the structure and terms of the three previous  
6 successful offerings, wellPoint, RichtCHOICE, and wellChoice  
7 and, on that basis, are likely to be acceptable to investors,  
8 taking into account past trends and current market  
9 conditions."

10 Do you agree with that conclusion?

11 A I agree that certainly the terms that I assume that Banc of  
12 America were using at that time, which were the initial  
13 terms, were generally comparable. And again, Banc of America  
14 used a fairly general survey. They don't necessarily go into  
15 the detail which our report does, just as a difference. And  
16 so at the level that they were operating at, which was  
17 relatively high in general, I would agree that the terms are  
18 generally in line with other comparable companies.

19 Obviously when one actually gets into the detail, one  
20 sees differences, particularly with the wellChoice IPO, which  
21 we've talked about. But I think on the assumption that  
22 there -- that Banc of America was using the initial Form A, I  
23 would agree with Banc of America that the terms set out in  
24 that initial Form A generally would be acceptable to  
25 investors.

C E R T I F I C A T E

I, SUE E. GARCIA, a duly authorized Court Reporter and Notary Public in and for the State of Washington, residing at Tacoma, do hereby certify:

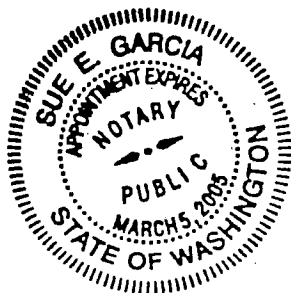
That the foregoing deposition of MARTIN ALDERSON-SMITH was taken before me on the 25th of November, 2003, and thereafter transcribed by me by means of computer-aided transcription, that the deposition is a full, true, and complete transcript of the testimony of said witness;

That the witness, before examination, was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth, and that the witness RESERVED signature;

That I am not a relative, employee, attorney, or counsel of any party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That upon completion of signature, if required, I shall herewith securely seal the original deposition transcript and serve the same upon ROBERT B. MITCHELL, counsel for PREMIER.

IN WITNESS HEREOF, I have hereunto set my hand and affixed my official seal this December 3, 2003.



*Sue E. Garcia*  
SUE E. GARCIA  
WA Lic. No. 2781



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BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF WASHINGTON

In the Matter of the Application  
regarding the Conversion and  
Acquisition of Control of Premera Blue  
Cross and its Affiliates.

)  
)  
)  
)  
**COPY**  
No. G 02-45

DEPOSITION UPON ORAL EXAMINATION OF  
MARTIN ALDERSON SMITH  
March 9, 2004  
Seattle, Washington

Taken Before:  
SUE E. GARCIA, CCR, RPR  
Certified Court Reporter  
of  
CAPITOL PACIFIC REPORTING, INC.  
2401 Bristol Court S.W.  
Olympia, WA 98502  
360.352.2054  
e-mail: [capitol@callatg.com](mailto:capitol@callatg.com)  
[www.capitolpacificreporter.com](http://www.capitolpacificreporter.com)

1 be a fair statement?

2 A Yes. I think that is a fair statement.

3 Q And is it Blackstone's position that Blue Cross Blue Shield  
4 of America's refusal to approve some of these terms and,  
5 therefore, its right, if Premera agrees to them, to terminate  
6 Premera's trademark license, that that's just the way it  
7 goes?

8 A We in our earlier report have indicated that the loss of the  
9 trademark license would be a major -- could lead -- in fact,  
10 would lead, I think, to a major diminution of value of  
11 Premera. And therefore, clearly we do not wish to go into a  
12 situation -- we would not wish to have Premera go into a  
13 situation where the trademark is eliminated or withdrawn from  
14 Premera. So I think that is probably the answer that to the  
15 question that you asked.

16 Q Don't you sort of get into a situation where either BCBSA has  
17 to bend or the State does?

18 A I think it's fair to say that we -- we obviously need to look  
19 after the interests of our client, who is the State of  
20 Washington, and the foundations. And we -- though I fully  
21 appreciate -- I think we do fully appreciate the loss of a  
22 mark would be extremely damaging, we believe that further  
23 negotiations may or should occur on a number of these points  
24 to ensure that at least the rights of our client are  
25 protected to the best possible of our ability. And we are

1       that very remote event, that very remote yet bad event,  
2       taking place.

3   Q    I take it you never perceived that Premera's attempting to  
4       try to obtain a conversion carte blanche, did you?

5   A    Absolutely not. I never considered that is a possibility  
6       partly because we'd discussed it, and we fully -- I think  
7       we're all in the same mind that that is something that is of  
8       no interest to Premera, just as it is no interest to the OIC.

9   Q    Okay. Now, the amended Form A actually does call for the  
10       offer and sale of the stock to happen on the same day that  
11       the conversion becomes effective, correct?

12  A    I'm not sure I know the exact words that --

13  Q    Let's see if we can find that.

14  A    Sure. Thank you.

15  Q    It would be in Exhibit A-4, which I think is in Volume I of  
16       Form A, which you have a copy of.

17  A    Yep.

18               MR. BINNEY: And my notes tell me to look on  
19       page 12 -- let's see -- Subset B, which defines "closing  
20       date."

21               Help me out, Kent. There's a further reference to the  
22       closing date, is there not?

23               MR. MARQUARDT: I don't know

24               MR. BINNEY: Okay.

25  Q    (By Mr. Binney) It says, "The closing" -- it says, "The

1 would mean that would be obviously a very substantial stock  
2 acquisition. And in that resulting entity, if it was a  
3 stock-for-stock transaction, the Premera shareholders would  
4 end up with exactly 80 percent of the resulting company, and  
5 the shareholders, the old shareholders of the other company,  
6 would end up with 20 percent of the resulting company.

7 we believe that that would be, therefore, a sensible and  
8 appropriate threshold. And if Premera decided to in a single  
9 transaction issue stock that diluted the preacquisition or  
10 premerger Premera shareholders down to below 80 percent, that  
11 on a transaction such as that, obviously an approved  
12 transaction, there would be an opportunity for a free vote by  
13 the Washington Foundation.

14 Q Okay. I take it, though, that 20 percent is not what's  
15 typically considered a change in control.

16 A It is traditionally not considered to be a change in control  
17 for Premera in that instance.

18 Q And your justification, if you will, for this is in the  
19 column on the right, that the New York Stock Exchange "rules  
20 currently require a shareholder vote for any transactions  
21 that would result in Premera's shareholders' pro forma  
22 ownership to be less than 80%." Did I read that correctly?

23 A That's correct.

24 Q Now, the reason that the New York Stock Exchange rule is  
25 there is to protect minority shareholders, correct? Isn't

1       that why the New York Stock Exchange imposes this?

2   A    I think it's a way to protect all the stock, not just the  
3       minority, that they would have a right to vote on  
4       transactions which are, you know, effectively, you know, not  
5       necessarily change-in-control transactions but are very  
6       substantial stock-swap transactions.

7   Q    Usually the majority shareholder doesn't require a lot of  
8       protection, does he?

9   A    That's fair. That's fair.

10   Q   And, in fact, the Washington Foundation probably would be the  
11       majority shareholder at least for quite some time, wouldn't  
12       it?

13   A    It -- certainly in the early years that would be probably the  
14       case, yes.

15   Q    In fact, would it be fair to say that a lot of the  
16       restrictions in the Voting Trust Agreement -- Voting Trust  
17       and Divestiture Agreement are there to protect minority  
18       shareholders from the Washington Foundation?

19   A    That may be the case, yes.

20   Q    By the way, does NASDAQ have a similar rule to the New York  
21       Stock Exchange rule?

22   A    I'm not aware of NASDAQ having a rule similar to the NYSE  
23       rule.

24   Q    Have you read Mr. -- I guess the -- first of all, have you  
25       read any of the opinions that Premera submitted by its

1 certain situations. And there has to be a balance between,  
2 you know, the extent to which the Washington Foundation can  
3 freely vote and the value and the security of the new  
4 shareholders, who need to be brought into the Premera capital  
5 structure.

6 If there was a free vote given on every element that  
7 might or might not affect the value of the Washington  
8 Foundation shareholding, this may impact the marketability of  
9 the securities that the foundation and Premera wish to sell  
10 to new shareholders. And clearly there is a balance in terms  
11 of how much power you give to the Washington Foundation  
12 versus what type of protections you can provide and what  
13 ability you can give to the new shareholders to really try  
14 and shape the destiny of the company.

15 So I would tend not to agree with your statement...

16 Q Okay. That's an even longer way of saying no. But...

17 Do you believe that having or not having this 20-percent  
18 threshold for a free vote affects of value or affects the  
19 price, I should say -- scrap that. The let me start over.

20 Do you believe that having or not having this 20-percent  
21 threshold affects the amount of money that the Washington  
22 Foundation can sell its stock -- can get for selling its  
23 stock?

24 A I do not believe that the presence or absence of this  
25 condition would have a, you know, significant financial

1 impact on the value of the Washington Foundation' stock in  
2 the company either before or after the IPO.

3 Q Okay. We can move on. I believe that horse is dead. Let's  
4 move to the next one.

5 "The Washington Foundation should be allowed to maintain  
6 5% of the outstanding common stock outside the trust at all  
7 times." In particular, you mean 5 percent less one share?

8 A Correct.

9 Q "Also, the voting trust should cease to apply to Washington  
10 when it drops below 5% ownership within the trust." Okay.  
11 Let me start with the first sentence.

12 I take it if there weren't a second foundation that also  
13 wanted to have 5 percent outside the trust that there's  
14 really no issue with the first sentence.

15 A I believe that that is the case.

16 Q Okay. Because we have that pesky Alaska out there that also  
17 wants to be able to vote -- have voting shares outside the  
18 trust, the way that the amended Form A works is that between  
19 the two of them they have 5 percent less one share, and they  
20 have to figure out how to divvy that up, correct?

21 A Correct.

22 Q Okay. Why do you think it is so important for the Washington  
23 Foundation to be able to vote 5 percent of the stock outside  
24 the voting trust?

25 A It is just, again, because generally in a number of other

1 Q You're not aware, I take it, of any precedent transaction  
2 with two foundations, each having 5 percent less one share  
3 outside of voting trust?

4 A We obviously have looked for particular precedents where  
5 we've had IPOs of Blue Cross Blue Shield companies in  
6 different states. And obviously that's a very, very small,  
7 in fact, a nil set. And therefore, we've not really found  
8 any precedents of that type.

9 Q Would it be fair to say that this particular provision is  
10 well beyond anything that was in the WellChoice transaction?

11 A Given the fact that WellChoice was only one state, this is --  
12 yes. This is a different factor that WellChoice did not need  
13 to confront.

14 Q What impact, if any, do you think would the Washington  
15 Foundation having 5 percent less one share versus having  
16 2 1/2 percent less one share outside the voting trust have on  
17 what the Washington Foundation would be able to get when it  
18 sold its stock?

19 A We do not believe that there would be a significant change in  
20 value in terms of what the Washington Foundation could get  
21 for its stock as it sold it down.

22 Q So you don't understand that investors might pay more for  
23 stock if both Washington Foundation and Alaska Foundation got  
24 to vote 5 percent less one share versus 2 1/2 apiece?

25 A I don't think that would have a significant impact on



1 program that's going to be effective after the  
2 stock-restriction program but votes on it earlier than six  
3 months before the end of the stock restriction program, you  
4 want to have to have -- to be able to freely vote on that as  
5 well?

6 A That's correct. It's our understanding that there will be an  
7 appropriate time to bring in a new plan as the old plan  
8 expires. We believe that six-month window to actually adopt  
9 that new plan is an appropriate amount of time. And if for  
10 whatever reason that new plan is brought in earlier than six  
11 months before the expiration of the old plan, we would like  
12 the right to vote on that as well in this free-voting format.

13 Q I take it it's -- this isn't prompted by the belief that  
14 those greedy executives will turn around tomorrow and enact a  
15 plan that becomes effective in three years and one day that  
16 gives them everything that they think they ought to have  
17 gotten during the first three years.

18 A No, I don't think so.

19 Q Now, do you have any comparable provisions in any precedented  
20 transactions for the ability to vote on plans that are  
21 effective after the end of a restriction period?

22 A Not to the best of my knowledge, no.

23 Q And isn't it true that amongst the BCBS conversions this is  
24 the only one or the first one that has a three-year  
25 restriction period?

1 A When you say "a three-year restriction period" -- I mean,  
2 there is -- there will be a plan operating in the second two  
3 years of those three years.

4 Q Correct.

5 A So it is likely to be the first plan that covers such a  
6 length of time.

7 Q Okay.

8 A Because I think in many of these other plans, particularly  
9 the New York plan, these plans were, in fact, adopted after  
10 the company had gone public because there was, again, in the  
11 State of New York an absolute prohibition on option in the  
12 first year.

13 Q Outside of New York?

14 A Outside of New York I think it's -- I think your comment is  
15 valid.

16 Q In fact, the usual period that's covered by whatever  
17 restrictions there are on stock-based programs is two years  
18 in these conversions, correct?

19 A I believe that is the case.

20 Q So this is another one where, in fact, you've gone past  
21 WellChoice and everyone else outside of New York, correct?

22 A Yes. Yeah. I mean, subject to the comments I made on  
23 WellChoice with the New York plan, I would agree with you.

24 Q Okay. The last item on page 8 is, "The Washington Foundation  
25 should have the right to nominate its own representative to

1 Q In some areas.

2 A In the health insurance, BCBSA, IPO world.

3 Q 'Cause I knew some owners of tech stocks that would argue  
4 with you there.

5 But okay. So what about something in the nature of a  
6 best-efforts clause or something that's -- I mean, well let  
7 me put it this way --

8 Let me ask you this: would a proposal that carried with  
9 it the option of seeking BCBSA waiver be something that would  
10 make this less of an obstacle, at least for Blackstone?

11 A In other words, that the company would support the  
12 application of the waiver?

13 Q Uh-huh.

14 A The concept you have in mind, that could potentially be an  
15 area for more discussion. And again, I would defer some of  
16 these points to Mr. Koplovitz, who is probably more involved  
17 in this particular element.

18 Q Do you think that the -- whether or not the Washington  
19 Foundation -- whether or not the Washington Foundation's  
20 ability to designate a board member after five years would  
21 affect the value that the Washington Foundation would get  
22 when it sells the stock?

23 A I certainly don't think it would have any diminution in value  
24 for the Washington Foundation stock. I mean, there may be  
25 some slight enhancement in the value only in that the

1       Washington Foundation feels that they have a closer, you  
2       know, working relationship with a particular director. But  
3       my belief would be that, either a diminution or an accretion,  
4       it would be very marginal.

5   Q   And would be -- do you think that investors would pay more or  
6       less for Premera's stock if there was an aggregate  
7       divestiture deadline or separate divestiture deadlines?

8   A   Again, so long as the stock is brought into the market in an  
9       orderly and regulated manner, I think that it is unlikely to  
10      have a material impact one way or the other in terms of value  
11      as between an aggregate and individual sell-down deadlines.

12   Q   Last item on page 9, you're proposing, if I understand it,  
13       that the voting trust agreement should be modified to  
14       eliminate all voting restrictions if BCBSA terminates the  
15       license to the Blue Cross Blue Shield marks.

16               Is that a fair restatement of this proposal?

17   A   Yes. That is correct.

18   Q   Now, if the Blue marks are lost, we're pretty much in a  
19       disaster scenario anyway, aren't we?

20   A   It's our belief that -- and certainly referring back to our  
21       earlier report in October -- that if the Blues are withdrawn  
22       or lost, this would have a significant negative impact on the  
23       value of this company. We also, you know, believe that,  
24       based on historical precedent, that chances of losing those  
25       Blue marks are quite low.

1 the Washington Foundation's ability to vote freely in the  
2 amended Form A that are more restrictive than the wellChoice  
3 transaction?

4 A well, we've discussed, I think, the issue of stock  
5 compensation, but I think that is largely -- this is equity  
6 compensation for management, I think that's probably largely  
7 in line with wellChoice.

8 Q It's actually a year longer.

9 A It is, in fact, one year longer. So for that reason it's a  
10 little bit -- a little bit broader than the wellChoice  
11 situation. So that's one area. I'm not sure of any other  
12 areas where we are significantly different from the  
13 wellChoice case.

14 Q So to the extent that you are seeking further modifications,  
15 you are seeking to increase the Washington Foundation's  
16 ability to vote freely over and above the wellChoice  
17 transaction, correct?

18 A That is correct.

19 Q The items on the particular bullet points on the right side  
20 of the page, we discussed all of these rights before.

21 A Yes, I believe that we have. Yes.

22 Q On page 18 there are two items there, each of which have been  
23 resolved to Blackstone's satisfaction, correct?

24 A That is correct.

25 Q See how fast it goes when everything's resolved?

1           Having said that, on the points I think we've discussed  
2           today -- I think that on all of the points that we've  
3           discussed today, I think the impact was generally seen as,  
4           you know, small.

5   Q   And, in fact, in some cases it wasn't really clear which  
6           direction the impact would be.

7   A   In a number of these, it's a matter of balancing up a whole  
8           range of different forces on a -- you know, on a stock price.

9   Q   And Blackstone has not undertaken to investigate the impact  
10          financially of any of these restrictions on either a share  
11          price or total consideration that the foundation would  
12          receive upon sale of any of these shares?

13   A   We have not carried out that study, which obviously would be  
14          a fairly difficult analysis to perform in terms of isolating  
15          these elements and trying to identify the price impact.

16   Q   Somewhere between economic -- econometric modeling and  
17          reading tea leaves?

18   A   And obviously we've talked about a few in our report. We did  
19          talk about the removal of the mark, where we can be quite  
20          confident that, all other things being equal, there could be  
21          a material negative impact.

22   Q   I take it that in your view the stock restrictions and  
23          conditions proposed by Premera to be imposed on the  
24          Washington Foundation would pale in comparison to the impact  
25          of losing the marks.

1 A That is my understanding, yes.

2 Q Now, I understand Mr. Cantilo will be testifying tomorrow.  
3 If Mr. Cantilo says that he bases this statement on  
4 Blackstone's report, would that be correct?

5 A I think you'll see that in the Blackstone report we have  
6 identified that there could be either price or value or, sort  
7 of, governance damage from some of the unresolved elements  
8 that we've identified. And, you know, I think it's fair to  
9 say that, you know, there could be some diminution in value  
10 as a result of those issues.

11 I'm not sure I'm -- I can go quite as far as is set out  
12 in this page, and I say that again subject to, you know,  
13 deferring to Mr. Koplovitz, who I think was present in a  
14 number of the negotiations where Mr. Cantilo was also  
15 present. I have actually not been in those negotiations with  
16 Mr. Cantilo for several months.

17 Q Okay. It's been so long; let's mark an exhibit.

18 (Deposition Exhibit No. 2 marked for  
19 identification.)  
20

21 Q (By Mr. Binney) Showing you what's been marked as Exhibit 2  
22 to your deposition, not to be confused with Exhibit 2 to the  
23 Koplovitz deposition, this is the supplemental report for the  
24 Banc of America Securities.

25 First question is: Have you had a chance to look at

1 this before?

2 A I have not read this document or even had a chance to look at  
3 it.

4 Q Okay. More fun airplane reading for you.

5 More or less the heart of this document starts on  
6 page 7. And since this is going to be the last area that I'm  
7 going to be asking you about today, I wonder if you would  
8 take the time as to go ahead and read -- why don't we do it a  
9 page at a time.

10 A Uh-huh.

11 Q Read through those and tell me just generally where you think  
12 you have disagreements.

13 A (Perusing document.)

14 Q Feel free to go to the next page to finish that last  
15 paragraph.

16 A Uh-huh. Okay.

17 Q Okay. Now, what, if anything, on page 7 and the paragraph  
18 that carries over at the top of page 8 of the Banc of America  
19 Securities report did you find that you disagreed with?

20 A Obviously the Banc of America report is looking at the value  
21 of Premera from a public-shareholder point of view, so what  
22 is attractive to a public shareholder, as we were talking  
23 earlier, what are the inducements to buy shares in Premera as  
24 a non-Premera shareholder with no history with Premera.

25 So based on that, I understand the first point in terms



1 of the first three paragraphs. I also understand the point  
2 in terms of the amended foundation structure, where there is  
3 a belief that from the -- from the -- a new shareholder's  
4 point of view, that should not be a significant detriment.

5 I note sort of with interest that -- you know, that  
6 there is a -- that the Banc of America does show that there  
7 is a slightly different motivation in terms of the New  
8 Premera shareholders versus the foundations in terms of one  
9 wishing to maximize the value of the sale of its stake  
10 because it's, sort of, effectively forced to reduce its stake  
11 over time and to the creation of, sort of, a longer term  
12 shareholder value. And therefore, there is that difference,  
13 which I agree with, from Banc of America's point of view.

14 With regard to the final paragraph, I don't necessarily  
15 agree with the point that the Voting Trust and Divestiture  
16 Agreement being torn up in the event of a loss of the marks  
17 would have an impact on the value of the business. Because I  
18 think that none of us can predict under what basis the marks  
19 would be lost, and there are so many different possible  
20 reasons for the marks to be lost.

21 Some of those reasons, if they're followed by the  
22 foundations' then actually taking control of the business and  
23 actually trying to resolve some the issues that led to the  
24 loss of that mark, may be seen as good thing from the outside  
25 shareholder from this point of view.

- 1 Q Two points. First of all, note that the Banc of America  
2 Securities used the verb "could have additional negative  
3 impact" as opposed to "would."
- 4 A Right.
- 5 Q Right. So in that sense I don't think they're predicting.  
6 Just raising the possibility, correct?
- 7 A Yes. Could have positive impact, too, so...
- 8 Q So you would agree that it could have an impact, correct?
- 9 A It could have a negative, yes.
- 10 Q Now, the second thing is that -- just backing up for a  
11 second -- the foundations essentially are created to  
12 become -- I don't want to use "charitable organizations"  
13 because this runs into the (c)(4) versus (c)(3) issues.
- 14 But they're certainly organizations created with an idea  
15 toward the public good and distributing funds where to  
16 improve health, et cetera, in their respective states,  
17 correct?
- 18 A Uh-huh.
- 19 Q And in that capacity, would you agree that they're not  
20 necessarily likely to be managed by individuals with  
21 expertise in managing health insurance companies?
- 22 A The foundations themselves or the charitable organizations  
23 that may -- they may be giving -- I mean, one would hope --
- 24 Q The foundations themselves.
- 25 A One would hope that the foundations would be run by, you

1 know, reasonably, you know, commercially minded individuals,  
2 or at least have a number of commercially minded individuals  
3 on their -- in their group of trustees.

4 Q From the perspective of a public investors,  
5 Mr. Alderson Smith, wouldn't you be a little dismayed if the  
6 company you'd invested in was being taken over by essentially  
7 a charitable foundation?

8 A Again, I can't predict what the bases are for the loss of  
9 these marks. If the loss of the marks is due to the  
10 management incompetence, I would probably feel reasonably  
11 comfortable that someone else was coming in and cleaning  
12 house. And if that was a charitable foundation, so be it.

13 On the other hand, you know, the issue I'm struggling  
14 with is we are all, including Banc of America Securities  
15 here, trying to identify, you know, a very -- what we hope is  
16 a very remote possibility and try to understand what the  
17 issues are that lead up to that remote possibility are and  
18 what the remedies are, the fallout of that remote possibility  
19 occurring.

20 For all of those reasons, I would sort of disagree with  
21 this point in -- from -- in that, from the foundation's point  
22 of view, in this possibility the foundations would like the  
23 maximum flexibility to try and remedy what is probably --  
24 probably a very bad situation. And to try to do that in the  
25 constraints of the voting trust agreement may be problematic.

1 That would be, sort of, my take on -- in other words, I -- I  
2 mean, I understand this -- it could destroy value, could  
3 increase value, the foundation seizing control.

4 It's hopefully such a remote but also such a bad thing  
5 that happens that, you know, it's -- we would like to get the  
6 maximum ability and the maximum flexibility to seize control,  
7 if that's what's need.

8 Q Sort of like planning how to divide up the Geiger counters  
9 after the nuclear attack?

10 A Something like that.

11 Q Would you, then, do the same thing we just did for that first  
12 page with the section called Size of Free Voting Stakes.

13 (Clarifying interruption by the  
14 reporter.)  
15

16 THE WITNESS: (Perusing document.)

17 Q (By Mr. Binney) All right. So you've read the Size of Free  
18 Voting Stakes on page 8?

19 A I have.

20 Q Any disagreements with what Banc of America Securities has to  
21 say in this section?

22 A No. I would agree with them that the destruction of value by  
23 losing the mark is greater than the benefit in value of  
24 holding an additional 5-percent stake outside the foundation.

25 However, you know, we're not advocating that on this

1 particular issue in isolation that, you know, we go so far as  
2 to jeopardize the BCBS mark. In other words, it's our  
3 position that we think that there should be further  
4 negotiation with BCBS.

5 The point that they make in terms of wellChoice is  
6 obviously an interesting one in terms of its similarities but  
7 also in terms of its differences. I think that's probably my  
8 only, sort of, observation on this.

9 Q Okay. Do you have any different understanding as to the  
10 facts concerning the wellChoice transaction in this section?

11 A I don't have a different interpretation on the facts.

12 Q Okay. Let's do the Voting Rights section next, bottom of  
13 page 8 through first full paragraph on page 9.

14 A (Perusing document.)

15 Q Any points made here with which you disagree?

16 A No. I mean, I note that at the very last sentence that Banc  
17 of America Securities mention on the change-of-control  
18 provision, it should be more in line with previous investor  
19 experience.

20 However, it's interesting that Banc of America  
21 Securities doesn't make any judgments in terms of whether  
22 this would be detrimental to outside investors. I think my  
23 personal view would be outside investors wouldn't give a hoot  
24 one way or the other in terms of whether this change of  
25 control is 50 percent of the resulting company or 80 percent

1 of the resulting company.

2 But the -- the point that is made, I don't have any  
3 other disagreements, other than the absence of any comment on  
4 the shareholder reaction and also "change in control  
5 typically does not occur until there's a 50% or greater  
6 change in ownership." I fundamentally disagree with that  
7 statement.

8 Q You fundamentally disagree?

9 A Yeah. Changes in control can occur often at much lower  
10 percentages than 50 percent. It all depends on the  
11 distribution of the shares, how concentrated the shares are  
12 in any particular individual or group's hands.

13 In other words, a control block in a company may be only  
14 25 or 35 percent of the company. Certainly there is quite a  
15 lot of precedent to indicate that numbers well below  
16 50 percent would be a change in control or a control block.

17 Q Okay.

18 A But I think those two points excepted, I'm in general broad  
19 agreement with the BAS' comments there.

20 Q Let's take a look at Divestiture Schedule and read that.  
21 That will go on the rest of page 9 over to the top of  
22 page 10.

23 A (Perusing document.)

24 Q Same question as to this: what if any points of disagreement  
25 did you find in this section?

1 A I mean, I think our position would be that, you know, (A) an  
2 accelerated divestiture schedule -- the more accelerated a  
3 forced divestiture schedule is, this does not necessarily --  
4 this is not necessarily in the shareholder -- new  
5 shareholder's best interests.

6 In other words, if there is an overly aggressive  
7 schedule to divest holdings, then that could put downward  
8 pressure on the share price for the new holders. And that  
9 may, in fact, end up in the new holders' paying less for the  
10 shares than they might otherwise.

11 Given that, clearly there is -- there is the issue of  
12 how both Alaska and Washington sell down their stakes. And  
13 the -- you know, the concern that we still in Washington have  
14 is, particularly as those stakes are sold down, if one side  
15 does not sell down its stake as much as it should, then  
16 clearly there's a penalty on the other foundation, which we  
17 think is problematic and is not addressed in this particular  
18 element.

19 But I think it's fair to say that as a general rule, you  
20 know, long-term holders of the company, you know, would be  
21 the optimal situation. So in other words, if these -- if  
22 these foundations were ultimately going to hold shares for a  
23 long period of time, that would be the best possible  
24 situation from a pricing point of view. Given the fact that  
25 they need to sell down their shares (A) to satisfy BCBSA and

1 (B) to fund healthcare initiatives, the -- generally the more  
2 relaxed the schedule of divestment, the better there should  
3 be -- the better impact on -- or less the impact on the share  
4 price.

5 Q Particularly interested in your comment on the statement on  
6 the top of page 10, "Foundations formed in other BCBS  
7 not-for-profit to for-profit conversions have not had any  
8 known difficulties meeting their divestiture schedules.  
9 Given the success of these precedent transactions, it is  
10 unlikely that the Foundations in this transaction will meet  
11 any difficulty in meeting the divestiture guidelines."

12 Do you think that BAS is wrong in its observations?

13 A No. I mean, I think that, you know, there is always fear of  
14 the future, fear of the unknown. We would hope that the  
15 markets will continue to be as accommodative to BCBS  
16 companies in the next ten years as they have been in the last  
17 10 years.

18 And obviously it's been a very -- from a -- on an  
19 overall point of view, the last decade or the last 15 years  
20 have been a good time to sell down shares into the market if  
21 you're a BCBSA affiliate. Because generally healthcare  
22 companies, and specifically Blue Cross Blue Shield companies,  
23 have experienced quite good stock-price growth over the last  
24 10 or 15 years. One would hope that during the course of the  
25 next 5 or so years, or 5 to 10 years, that those good



1 conditions would be maintained because, obviously, if they're  
2 not, then there could be more problems.

3 But certainly in the last decade that has been the case,  
4 that precedent companies had probably relatively little  
5 difficulty in selling down their shares. And when all is  
6 said and done, Premera is not one of the largest; it doesn't  
7 have a huge block of stock to sell down.

8 Q I have one paragraph on here on Board Members, if we could  
9 take a look at that.

10 A (Perusing document.)

11 Q Good job.

12 Any points of disagreement with the conclusions with  
13 respect to board members in the BAS report?

14 A No. I mean, I think it's reasonable to point out that BCBSA  
15 has indicated it's unlikely to accede to more than one board  
16 member.

17 The point on the loss of the marks is something that I  
18 would agree with, that it would be value destructive. And I  
19 don't -- from an investor point of view, which is the slant  
20 that BAS is taking here, I don't have an issue with their  
21 point of view.

22 And I think we've talked about why we feel that  
23 Washington should have a board member which it selects and  
24 which it then has -- reports back to it. But I don't have a  
25 problem with this paragraph from BAS's point of view.

- 1 Q I couldn't find anything in the discussion of Registration  
2 Rights Agreement here that bore on anything that's still a  
3 point of controversy between Premera and the OIC, at least  
4 Premera and Blackstone. Take a quick look at that and tell  
5 me if there's anything in there that is in dispute.
- 6 A (Perusing document.)
- 7 No. No. I mean, I assume that when -- the comment at  
8 the top of paragraph 2, "The State's Consultants have argued  
9 that Premera should..." I assume that's a historical  
10 comment.
- 11 Q 'Cause at this point in time there's not a --
- 12 A I think we have a meeting of the minds in terms of those --  
13 responsibility for those expenses.
- 14 Q Good. Then you've got the comment on the Unallocated Shares  
15 Escrow Agent Agreement.
- 16 A Uh-huh.
- 17 Q Would you take a look at that.
- 18 A (Perusing document.) I would agree with that point of view.
- 19 Q This is -- from a broader perspective it does not address the  
20 individual drafting issues that you raise with respect to --  
21 I should say as opposed to drafting issues, your observations  
22 with respect to its completeness, does it?
- 23 A It's completeness -- I'm sorry. I didn't understand.
- 24 Q The completeness of the USEA.
- 25 A No. I mean, this was just an investor-perception series of

1        comments rather than that it -- that the agreement itself may  
2        require a few tweaks.

3    Q    How about the section in the next page, IPO Transaction Terms  
4        and weighting -- and Timing?

5    A    (Perusing document.)

6    Q    Pretty noncontroversial, I would think.

7    A    Yeah. I assume that BAS is indicating that it is a good idea  
8        for us to have some preliminary information on pricing and  
9        terms in advance of the road show. And I've already agreed  
10       that those terms would be preliminary and would be subject to  
11       change. Because a lot can happen in the markets and to  
12       Premera over the four weeks that we've requested prior to the  
13       road show, let alone during the two or three weeks of the  
14       road show itself.

15   Q    Now. The last section before the conclusion is Option Grant  
16        Waiting Period -- Provision, rather. This basically  
17        addresses the one-year waiting before any stock options are  
18        granted, correct?

19   A    Yes, that is correct.

20   Q    The subject, then, is not controversial, at least with  
21        respect to Blackstone?

22   A    No. We are comfortable with the one-year waiting period. It  
23        is a period that is -- has been very well set out in a whole  
24        range of demutualizations and conversions in other states,  
25        particularly in New York, where it is a legal minimum.

1 And again, our understanding, which is in line with that  
2 of BAS, is that investors are prepared to accept a  
3 nonalignment for 12 months between management and  
4 shareholders because that nonalign is a state or  
5 regulatory -- regulatorily imposed moratorium.

6 Q And finally, take a look at the conclusion for this section.

7 A (Perusing document.) So shall I comment on the conclusion?

8 Q Please do.

9 A I think the first sentence, that it's similar to the  
10 wellChoice model, is correct. That it will be acceptable to  
11 investors I will agree with. I also agree that the loss of  
12 the mark would be negative -- would have a negative impact.

13 And we are not proposing that the mark be lost.  
14 Certainly as Blackstone we're not proposing that the mark be  
15 lost. And the changes that, therefore, we are proposing we  
16 think would have little or no negative impact and possibly  
17 even some positive impact on the IPO and on some subsequent  
18 sales of shares into market by the two foundations.

19 So we would agree with the individual points in that  
20 conclusion. We just wouldn't agree with putting of all of  
21 those points together.

22 Q Okay. Why don't you give me the traditional moment to confer  
23 with Mr. Buck.

24 (Brief pause in proceedings.)

25 ////

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C E R T I F I C A T E

I, SUE E. GARCIA, a duly authorized Court Reporter and Notary Public in and for the State of Washington, residing at Tacoma, do hereby certify:

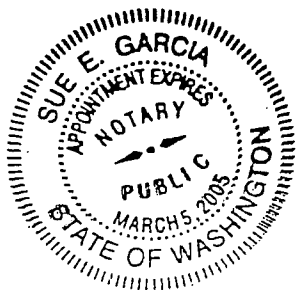
That the foregoing deposition of MARTIN ALDERSON-SMITH was taken before me on the 9th of March, 2004, and thereafter transcribed by me by means of computer-aided transcription, that the deposition is a full, true, and complete transcript of the testimony of said witness;

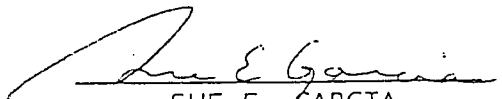
That the witness, before examination, was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth, and that the witness RESERVED signature;

That I am not a relative, employee, attorney, or counsel of any party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That upon completion of signature, if required, I shall herewith securely seal the original deposition transcript and serve the same upon DAVID H. BINNEY, counsel for PREMIER.

IN WITNESS HEREOF, I have hereunto set my hand and affixed my official seal this March 14, 2004.



  
SUE E. GARCIA  
WA Lic. No. 2781

# **EXHIBIT B**

**Brian Kinkead**

**EXHIBIT B**

VOTING TRUST AND DIVESTITURE AGREEMENT - PRECEDENTS COMPARISON

ITEM	PREMERA	WELLCHOICE <sup>1</sup>	RIGHTCHOICE	COBALT	WELLPOINT
Board Composition					
Designated Director	<ul style="list-style-type: none"><li>• So long as the Washington Foundation owns 5% or more of the capital stock, but in no event longer than five (5) years after the offering, the Washington Foundation and the Alaska Health Foundation (so long as the Alaska Health Foundation Beneficially Owns 5% or more of the issued and outstanding Capital Stock) will jointly have the right to propose a slate of three (3) individuals from which the Board of Directors will nominate one (1) such individual to serve as a member of the Board of Directors (the "Designated Member").</li></ul> <p>[Section 5.03(b)(i) of Voting Trust and Divestiture Agreement (p.13-14)]</p>	<ul style="list-style-type: none"><li>• For the first 5 years after the offering, and so long as Fund owns at least 5% of capital stock, Fund will have the right to present a slate of candidates for the board, and the board must select one of these candidates for election as a director. If board reasonably rejects all candidates, Fund may propose new candidates [§ 5.05(b)(i) of Voting Trust and Divestiture Agreement (p.9)]</li></ul>	<ul style="list-style-type: none"><li>• None</li></ul>	<ul style="list-style-type: none"><li>• None</li></ul>	<ul style="list-style-type: none"><li>• None</li></ul>
Independent/ Non-Affiliated Director Minimum Requirements	<ul style="list-style-type: none"><li>• 80% of directors must be Independent:<ul style="list-style-type: none"><li>— Not a Major Participant (e.g., Foundation or any affiliate)</li><li>— Not nominated by or at initiative of a Major Participant</li><li>— Shall not have announced a commitment to any proposal made by Major Participant that has not been approved by a majority of Independent directors</li><li>— Qualifies as independent under NYSE rules</li><li>— Not subject to any relationship, arrangement or circumstance which, in the opinion of a majority of Independent directors, would likely interfere with exercise of independent judgment</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Majority of directors must be Independent:<ul style="list-style-type: none"><li>— Not a Major Participant (e.g., Fund or any affiliate)</li><li>— Not nominated by or at initiative of a Major Participant (except under voting trust and divestiture agreement)</li><li>— Shall not have announced a commitment to any proposal made by Major Participant that has not been approved by a majority of Independent directors</li><li>— Qualifies as independent under NYSE rules</li><li>— Not subject to any relationship, arrangement or circumstance which, in the opinion of a majority of Independent directors, would likely interfere with exercise of independent judgment</li></ul></li><li>• 80% of the directors must be Non-</li></ul>	<ul style="list-style-type: none"><li>• 80% of directors must be Independent:<ul style="list-style-type: none"><li>— Not a Major Participant (e.g., Foundation or any affiliate)</li><li>— Not nominated by or at initiative of Major Participant</li><li>— Shall not have announced a commitment to any proposal made by Major Participant that has not been approved by a majority of Independent directors</li><li>— Not subject to any relationship, arrangement or circumstance which, in the opinion of a majority of Independent directors, would likely interfere with exercise</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Initially, 80% of directors must be Independent (percentage may be reduced to 50% as Foundation ownership decreases):<ul style="list-style-type: none"><li>— Not a Major Participant (e.g., Foundation or any affiliate)</li><li>— Not nominated by or at initiative of Major Participant</li><li>— Shall not have announced a commitment to any proposal made by Major Participant that has not been approved by a majority of Independent directors</li><li>— Not subject to any relationship, arrangement or circumstance which, in the opinion of a majority of</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Restricted by its Blue Cross Blue Shield Association license to maintain a majority of directors who are Independent:<ul style="list-style-type: none"><li>— Either (i) one of several enumerated persons or (ii) elected with approval of 2/3 of the then Independent directors</li><li>— Not a beneficial owner of more than 5% of voting power</li><li>— Not nominated by owner of more than 5% of voting power and, prior to election, did not have any arrangement with such beneficial owner to take any action as director</li></ul></li></ul>

<sup>1</sup> Entered into with Fund, which will receive 95% of WellChoice's FMV.

ITEM	PREMERA	WELLCHOICE <sup>1</sup>	RIGHTCHOICE	CORALT	WELLPOINT
	[Article III, § 4 of Articles of Incorporation (pg. 7-8)]	Affiliated: — Not a Major Participant (e.g., Fund or any affiliate) — Not nominated by or at initiative of Major Participant (except under the voting trust and divestiture agreement) — Shall not have announced a commitment to any proposal made by Major Participant that has not been approved by a majority of Independent directors  [Article IV, § 4 of Certificate of Incorporation (pp. 6-7)]	of independent judgment	Independent directors, would likely interfere with exercise of independent judgment	
Company's Right to Influence the Charitable Foundation	● See sections on Trustee Voting Provisions, Change of Control and Consultation Rights and Observation Rights	● See sections on Trustee Voting Provisions, Change of Control and Consultation Rights and Observation Rights	● See sections on Trustee Voting Provisions, Change of Control and Consultation Rights and Observation Rights	● See sections on Trustee Voting Provisions, Change of Control and Consultation Rights and Observation Rights	● See sections on Trustee Voting Provisions, Change of Control and Consultation Rights and Observation Rights
Divestiture Provisions	● 1 Year after completion of the IPO, the Foundations collectively must own less than 80% of outstanding stock [§ 7.01(b) of Voting Trust and Divestiture Agreement (p. 16-17)] ● 3 Years after completion of IPO, the Foundations collectively must own less than 50% of outstanding stock [§ 7.02 of Voting Trust and Divestiture Agreement (pp. 17)] ● 5 Years after completion of IPO, the Foundations must collectively own less than 20% of outstanding stock [§ 7.03 of Voting Trust and Divestiture Agreement (pp. 17)] ● 10 Years after completion of IPO, the Foundations collectively must own less than 5% of outstanding stock [§ 7.04 of Voting Trust and Divestiture Agreement (p. 17)]	● 3 Years after completion of conversion, Fund must own less than 50% of outstanding stock [§ 6.01(b) of Voting Trust and Divestiture Agreement (pp. 11-12)] ● 5 Years after completion of conversion, Fund must own less than 20% of outstanding stock [§ 6.02 of Voting Trust and Divestiture Agreement (p. 12)] ● 10 Years after completion of conversion, Fund must own less than 5% of outstanding stock [§ 6.03 of Voting Trust and Divestiture Agreement (p. 12)]	● 3 Years after completion of conversion, Foundation must own less than 50% of outstanding stock [§ 6.01 of Voting Trust and Divestiture Agreement] ● 5 Years after completion of conversion, Foundation must own less than 20% of outstanding stock [§ 6.02 of Voting Trust and Divestiture Agreement]	● 3 Years after completion of conversion, Foundation must own less than 50% of outstanding stock ● 5 Years after completion of conversion, Foundation must own less than 20% of voting power outside of shares held in trust N.B. There was no 1 year divestiture requirement because Cobalt already had a 20% public float ● Note: Foundation initially owned approximately 80.4% of outstanding stock	No binding divestiture requirements, but: ● 3 Years after completion of conversion, Foundation must own less than 20% of voting power outside of shares held in trust ● 5 Years after completion of conversion, Foundation must own less than 5% of voting power outside of shares held in trust



ITEM	PREMERA	WELLCHOICE <sup>1</sup>	RIGHTCHOICE	CORALT	WELLPOINT
Term of Agreement	<ul style="list-style-type: none"><li>Terminates upon the earlier of a (i) joint written notice by Foundation and Company to the Trustee that Foundations together beneficially own less than 5% of the issued and outstanding shares of common stock and less than 5% of the issued and outstanding shares of every other class of capital stock or (ii) the 10<sup>th</sup> anniversary<ul style="list-style-type: none"><li>Does not terminate on loss of BCBSA License</li></ul></li></ul> <p>[§ 10.1 of Voting Trust and Divestiture Agreement (p.23)]</p>	<ul style="list-style-type: none"><li>Terminates upon Fund beneficially owning less than 5% of the issued and outstanding shares of each class of capital stock; if, however, Company's license agreement is permanently terminated by Blue Cross Blue Shield Association as a result of Company's breach of its obligations thereunder, Fund shall have the right to terminate</li></ul> <p>[§ 9.01 of Voting Trust and Divestiture Agreement (p.16)]</p>	<ul style="list-style-type: none"><li>Terminates upon the joint written notice by Foundation and Company to the Trustee that Foundation beneficially owns less than 5% of the issued and outstanding shares of common stock and less than 5% of the issued and outstanding shares of every other class of capital stock</li></ul>	<ul style="list-style-type: none"><li>Terminates upon the joint written notice by Foundation and Company to the Trustee that Foundation beneficially owns less than 5% of the issued and outstanding shares of common stock and less than 5% of the issued and outstanding shares of every other class of capital stock</li></ul>	<ul style="list-style-type: none"><li>The voting trust agreement<sup>3</sup> terminates (a) if Company no longer licenses the Blue Cross marks from the Blue Cross Blue Shield Association, (b) if all shares held in the voting trust have been sold, assigned, transferred or withdrawn, (c) if Foundation and its affiliates cease to beneficially own capital stock in excess of the ownership limit mandated by the Blue Cross Blue Shield Association or (d) 10 years after conversion, unless (i) at any time within 2 years prior to the 10th anniversary of the date hereof, Foundation and Trustee extend the duration of the agreement for an additional period of up to a further ten years or (ii) Company reincorporates in Delaware, and, in that case the agreement automatically terminates and is replaced with another agreement in substantially similar form)</li><li>The Voting Agreement terminates automatically if: Company ceases to be subject to any license agreement with the Blue Cross Blue Shield Association; and/or (ii) Foundation and its affiliates cease to beneficially own capital stock in excess of the ownership limit</li></ul>
Payment for Trustee Services	<ul style="list-style-type: none"><li>Paid by Company until the first anniversary of the IPO as provided in a predetermined fee schedule. Following the 1<sup>st</sup> anniversary, the Company and the Washington Foundation split the fees equally</li></ul> <p>[§ 9.03 of Voting Trust and Divestiture Agreement (p.20)]</p>	<ul style="list-style-type: none"><li>Paid by Company as provided in a predetermined fee schedule</li></ul> <p>[§ 8.03 of Voting Trust and Divestiture Agreement (p.14)]</p>	<ul style="list-style-type: none"><li>Foundation and Company shall compensate the Trustee equally for its services as Trustee as set forth in a predetermined Trustees' fee schedule, and any such fees may be deducted from the cash dividends or other monies received by Trustee on the shares of capital stock</li></ul>	<ul style="list-style-type: none"><li>Foundation and Company shall compensate the Trustee equally for its services as Trustee as set forth in a predetermined Trustees' fee schedule, and any such fees may be deducted from the cash dividends or other monies received by Trustee on the shares of</li></ul>	<ul style="list-style-type: none"><li>Foundation pays Trustee \$10,000 per year as provided in a separate fee schedule and any such fees may be deducted from the cash dividends or monies received by Trustee on the shares to the extent otherwise unpaid to Foundation</li></ul>

<sup>3</sup> WellPoint uses two agreements: a voting agreement and a voting trust agreement

ITEM	PREMERA	WELL CHOICE <sup>1</sup>	RIGHT CHOICE	COBALT	WELLPOINT
			deposited in the voting trust, to the extent otherwise unpaid by Foundation	capital stock deposited in the voting trust, to the extent otherwise unpaid by Foundation	
Indemnification of Trustee	<ul style="list-style-type: none"><li>Company indemnifies the Trustee from all claims related to or arising from the agreement unless such claim results from trustee's gross negligence or willful misconduct or from an express written instruction given by the Foundation to the Trustee, in which case, the Foundation must indemnify the Trustee</li></ul> <p>[§ 9.06 of Voting Trust and Divestiture Agreement (p. 21-22)]</p>	<ul style="list-style-type: none"><li>Company indemnifies the Trustee from all claims related to or arising from the agreement unless such claim results from Trustee's gross negligence or willful misconduct</li></ul> <p>[§ 8.06 of Voting Trust and Divestiture Agreement (p. 15)]</p>	<ul style="list-style-type: none"><li>Foundation indemnifies the Trustee from all claims related to or arising from the agreement unless such claim results from trustee's gross negligence or willful misconduct</li></ul>	<ul style="list-style-type: none"><li>Foundation indemnifies the Trustee from all claims related to or arising from the agreement unless such claim results from trustee's gross negligence or willful misconduct</li></ul>	<ul style="list-style-type: none"><li>Foundation indemnifies the Trustee from all claims related to or arising from the agreement unless such claim results from trustee's gross negligence or willful misconduct</li></ul>
Voting					
Voting of Shares Held Outside of Trust	<ul style="list-style-type: none"><li>The Washington Foundation and the Alaska Health Foundation may each hold 5% of the capital stock outside of the voting trust, which may be voted freely, provided, however, if the BCBSA does not approve of such ownership, then only the Washington Foundation may hold shares of capital stock outside of the Voting Trust and it may not own more than 5% of the voting power, unless the Washington Foundation and Alaska Health Foundation agree to a different allocation of the shares among themselves</li></ul> <p>[Article I(iii) ("Voting Ownership Limit") of Voting Trust and Divestiture Agreement (p. 8)]</p> <ul style="list-style-type: none"><li>The Washington Foundation was granted one share of New PREMERA Class B Common Stock. The affirmative vote of the Washington Foundation as holder of the Class B Common Stock is required for (i) a restructuring of the common stock, (ii) the creation of a new class of capital stock or the issuance of additional shares of capital stock that would adversely affect the common stock or (iii) the issuance of additional shares of common stock that would adversely affect the Washington Foundation. At the time the</li></ul>	<ul style="list-style-type: none"><li>The Fund was permitted to hold outside of the voting trust one share less than 5% of the power of all shares of capital stock</li></ul> <p>[§ 2.01 of Voting Trust and Divestiture Agreement]</p>	<ul style="list-style-type: none"><li>The Fund was permitted to hold outside of the voting trust one share less than 5% of the voting power of all shares of capital stock</li></ul> <p>[§ 2.01 of Voting Trust and Divestiture Agreement]</p>	<ul style="list-style-type: none"><li>The Fund was not permitted to hold any shares outside of the voting trust</li></ul> <p>[§ 2.01 of Voting Trust and Divestiture Agreement]</p>	<ul style="list-style-type: none"><li>The Foundation (Western Health Partnerships), which owned 80.4% of the of the voting power of the outstanding capital stock of the Company, was required to make an initial deposit into the voting trust sufficient to reduce the number of the Foundation's shares of capital stock outside the voting trust to a level that does not exceed 50% of the voting power of the outstanding capital stock of the Company. Shares not deposited in the voting trust were subject to a voting agreement with the Company except that shares representing not more than 5% of the voting power may be excluded from voting trust and voting agreement</li></ul> <p>Section 1.1 of Voting Trust Agreement]</p> <ul style="list-style-type: none"><li>No Class B share concept</li></ul>

ITEM	PREMERA	WELLCHOICE <sup>1</sup>	RIGHTCHOICE	COBAUT	WELLPOINT
	Washington Foundation fails to own 5% or more of the common stock, the Class B common stock converts to one share of common stock [Article II, § 2 of Articles of Incorporation (pg. 2-3)]				
Trustee Voting Provisions	<ul style="list-style-type: none"><li>Trustee votes shares in voting trust as follows:</li></ul>	<ul style="list-style-type: none"><li>Trustee votes shares in voting trust as follows:</li></ul>	<ul style="list-style-type: none"><li>Trustee votes shares in voting trust as follows:</li></ul>	<ul style="list-style-type: none"><li>Trustee votes shares in voting trust as follows:</li></ul>	<ul style="list-style-type: none"><li>Trustee votes shares in voting trust as follows:</li></ul>
In election of directors	<ul style="list-style-type: none"><li>In favor of nominees approved by Independent Board Majority ((a) a majority of all directors who qualify as Independent and (b) a majority of directors present at meeting at which quorum was present)</li><li>In favor of the Foundations' Designated Member [§ 4.03(a) of Voting Trust and Divestiture Agreement (p. 11) and Article III, § 4(b)(3) of Articles of Incorporation]</li></ul>	<ul style="list-style-type: none"><li>In favor of nominees approved by Independent Board Majority ((a) a majority of all directors who qualify as Independent and (b) a majority of all directors)</li><li>In favor of Fund's Designated Member [§ 4.03(a) Voting Trust and Divestiture Agreement (p. 7) and Article IV, § 4(B)(3) of Certificate of Incorporation (p. 7)]</li></ul>	<ul style="list-style-type: none"><li>In favor of nominees approved by Independent Board Majority ((a) a majority of all directors who qualify as Independent and (b) a majority of all directors)</li></ul>	<ul style="list-style-type: none"><li>In favor of nominees approved by Independent Board Majority ((a) a majority of all directors who qualify as Independent and (b) a majority of all directors)</li></ul>	<ul style="list-style-type: none"><li>In favor of certain specified persons, nominees selected by the Board's Nominating Committee, or nominees selected by a majority of the incumbent board</li></ul>
Unless action is initiated with consent of Independent Board Majority, trustee votes:	<ul style="list-style-type: none"><li>Against removal of any director</li><li>Against any candidate for the board for whom no competing candidate has been nominated by an Independent Board Majority [§ 4.03(b) of Voting Trust and Divestiture Agreement (p. 11)]</li></ul>	<ul style="list-style-type: none"><li>Against removal of any director</li><li>Against any candidate for the board for whom no competing candidate has been nominated by an Independent Board Majority [§ 4.03(b) of Voting Trust and Divestiture Agreement (p. 7)]</li></ul>	<ul style="list-style-type: none"><li>Against removal of any director</li><li>Not to nominate any candidate to fill any board vacancy</li><li>Against any change in bylaws or articles</li></ul>	<ul style="list-style-type: none"><li>Against removal of any director</li><li>Not to nominate any candidate to fill any board vacancy</li><li>Against any change in bylaws or articles</li></ul>	<ul style="list-style-type: none"><li>Against removal of any director</li><li>Against any candidate for the board for whom no competing candidate has been nominated by the Nominating Committee</li><li>Not to nominate any candidate to fill any board vacancy</li><li>Against any change in bylaws or articles</li></ul>
On Employee Compensation Plans and Precatory Stockholder Proposals	<ul style="list-style-type: none"><li>On employee compensation plans or amendments to the Initial Equity Incentive Plan during first three years after IPO, or employee compensation plans that would be effective after 3 years from the that are submitted for stockholder approval prior to the second anniversary of the IPO, trustee will vote as directed by Foundations [§ 4.03(d), (e) of Voting Trust and Divestiture Agreement (p. 12)]</li></ul>	<ul style="list-style-type: none"><li>On employee compensation plans for which stockholder approval is sought and stockholder proposals that merely advise the board to take certain actions, trustee will vote in same proportion as nonaffiliated stockholders [§ 4.03(c) of Voting Trust and Divestiture Agreement (p. 7)]</li></ul>	<ul style="list-style-type: none"><li>Vote in manner consistent with recommendation of the board</li></ul>	<ul style="list-style-type: none"><li>Vote in manner consistent with recommendation of the board</li></ul>	<ul style="list-style-type: none"><li>Vote in identical proportions in favor of or in opposition to such matters as non-trust shares, unless the matter requires an absolute majority of all outstanding shares of common stock in order to be effected, in which case, the trustee shall vote the shares in favor of or in opposition to such matter as the majority of all non-trust votes are cast</li></ul>

ITEM	PREMIERA	WELLCHOICE <sup>1</sup>	RIGHTCHOICE	COBALT	WELLPOINT
	[Section 2.3 of Voting Trust Agreement]				[Section 2.3 of Voting Trust Agreement]
	<ul style="list-style-type: none"><li>On employee compensation plans or amendments to the Initial Equity Incentive Plan more than three years after IPO, and stockholder proposals that merely advise the board to take certain actions, trustee will vote in same proportion as nonaffiliated stockholders</li></ul> <p>[§ 4.03(c) of Voting Trust and Divestiture Agreement (p.11-12)]</p>				
On any matter, to the extent not covered above (other than Change in Control)	<ul style="list-style-type: none"><li>Vote in manner consistent with recommendation of Independent Board Majority</li></ul> <p>[§ 4.03(f) of Voting Trust and Divestiture Agreement (p.12)]</p>	<ul style="list-style-type: none"><li>Vote in manner consistent with recommendation of Independent Board Majority</li></ul> <p>[§ 4.03(e) of Voting Trust and Divestiture Agreement (p.7)]</p>	<ul style="list-style-type: none"><li>Vote in manner consistent with recommendation of the board</li></ul>	<ul style="list-style-type: none"><li>Vote in manner consistent with recommendation of the board</li></ul>	<ul style="list-style-type: none"><li>Vote in identical proportions in favor of or in opposition to such matters as non-trust shares, unless the matter requires an absolute majority of all outstanding shares of common stock in order to be effected, in which case, the trustee shall vote the shares in favor of or in opposition to such matter as the majority of all non-trust votes are cast</li></ul> <p>[Section 2.3 of Voting Trust Agreement]</p>

Change of Control Proposal and Consultation Rights	<ul style="list-style-type: none"><li>● Voting: For any change of control proposal (based on 50.1% change in ownership) submitted to stockholders by the board, the trustee votes as the Foundation directs [§ 4.03(d) of Voting Trust and Divestiture Agreement (p.12)]</li><li>● Consultation: So long as Foundation owns at least 20% of stock, Company must consult with Foundation prior to entering into a definitive agreement regarding a change of control proposal [§ 6.01 of Voting Trust and Divestiture Agreement (p.16)]</li></ul>	<ul style="list-style-type: none"><li>● Voting: For any change of control proposal (based on 50.1% change in ownership) submitted to stockholders by the board, the trustee votes as Foundation directs [§ 4.03(d) of Voting Trust and Divestiture Agreement (p.7)]</li><li>● Consultation: So long as Foundation owns at least 20% of stock, Company must consult with Foundation prior to soliciting any change of control proposal and after receipt of any change of control proposal [§ 5.08 of Voting Trust and Divestiture Agreement (p.11)]</li></ul>	<ul style="list-style-type: none"><li>● Voting: For any change of control proposal (based on 50.1% change in ownership) submitted to stockholders by the board, the trustee votes as Foundation directs [§ 4.03(d) of Voting Trust and Divestiture Agreement (p.7)]</li><li>● Consultation: So long as Foundation owns at least 20% of stock, Company must consult with Foundation prior to soliciting any change of control proposal and after receipt of any change of control proposal [§ 5.08 of Voting Trust and Divestiture Agreement (p.11)]</li></ul>	<ul style="list-style-type: none"><li>● Voting: In identical proportions in favor of or in opposition to such matters as non-trust shares, unless the matter requires an absolute majority of all outstanding shares of common stock in order to be effected, in which case, the trustee shall vote the shares in favor of or in opposition to such matter as the majority of all non-trust votes are cast. ● [Section 2.3 of Voting Trust Agreement]</li></ul>
Observation Rights/Right to Nominate Director and Receive Information	<ul style="list-style-type: none"><li>● So long as the Foundations own 5% or more of the capital stock, but in no event longer than five (5) years after the offering, the Designated Member has the right to meet with members of the board of the Foundation at least quarterly to discuss matters relevant to the Foundation's investment in the Company, which meetings must be conducted on a confidential basis in compliance with the parties' Confidentiality Agreement [§ 5.03(b)(ii) of Voting Trust and Divestiture Agreement (p.14)]</li></ul>	<ul style="list-style-type: none"><li>● For so long as Fund owns at least 20%, Fund will have the right to get certain Company information from its designated director [§ 5.05(b)(ii) of Voting Trust and Divestiture Agreement (p.10)]</li></ul>	<ul style="list-style-type: none"><li>● As long as Foundation beneficially owns 20% or more of the issued and outstanding shares of Capital Stock, Foundation, through an authorized representative, shall have the limited right to attend and observe all meetings of the board, including all executive sessions ● Foundation must comply with confidentiality and non-disclosure obligations ● Foundation's authorized representative must absent himself or herself from any portion of meeting presenting a conflict of interest</li></ul>	<ul style="list-style-type: none"><li>● Not discussed</li></ul>

Standstill Provisions	● Foundation prohibited from:	● Fund prohibited from:	● Foundation prohibited from:	● Foundation prohibited from:
— Selling shares to any person whose ownership exceeds or would exceed ownership limits of Blue Cross Blue Shield Association license agreements <i>[§ 5.02 of Voting Trust and Divestiture Agreement (p.13)]</i>	— Selling shares to any person whose ownership exceeds or would exceed ownership limits of Blue Cross Blue Shield Association license agreements. <i>[§ 5.04 of Voting Trust and Divestiture Agreement (p.9)]</i>  — In addition, so long as Fund owns shares in excess of such ownership limits, it may not sell, tender or offer to sell or tender to any person, any shares in response to any tender offer, merger or any proposal or offer to acquire any shares or assets that is opposed by the Independent Board Majority <i>[§ 5.03 of Voting Trust and Divestiture Agreement (p.9)]</i>	— Selling shares to any person whose ownership exceeds or would exceed ownership limits of Blue Cross Blue Shield Association license agreements.	— Selling shares to any person whose ownership exceeds or would exceed ownership limits of Blue Cross Blue Shield Association license agreements	— Selling shares to any person whose ownership exceeds or would exceed ownership limits of Blue Cross Blue Shield Association license agreements
— Acquiring additional shares (except pursuant to share dividend or split) <i>[§ 5.01 of Voting Trust and Divestiture Agreement (p.13)]</i>	— Acquiring additional shares (except pursuant to share dividend or split) <i>[§ 5.01 of Voting Trust and Divestiture Agreement (p.8)]</i>	— Acquiring additional shares (except pursuant to share dividend or split)	— Acquiring additional shares (except pursuant to share dividend or split)	— Acquiring additional shares or voting power (except pursuant to share dividend or split) <i>[Section 2 of Voting Agreement (which is different from the Voting Trust Agreement)]</i>
— Initiating, suggesting or encouraging nomination of any director or endorsing any candidate <i>[§ 5.03 of Voting Trust and Divestiture Agreement (p.13)]</i>	— Initiating, suggesting or encouraging nomination of any director or endorsing any candidate <i>[§ 5.05(a) of Voting Trust and Divestiture Agreement (p.9)]</i>	— Initiating, suggesting or encouraging nomination of any director or endorsing any candidate	— Initiating, suggesting or encouraging nomination of any director or endorsing any candidate	— No equivalent provision
— Soliciting any acquisition or change of control proposal <i>[§ 5.04 of Voting Trust and Divestiture Agreement (p.15)]</i>	— Soliciting any acquisition or change of control proposal. <i>[§ 5.06(a) of Voting Trust and Divestiture Agreement (p.10)]</i>	— Soliciting any acquisition or change of control proposal	— Soliciting any acquisition or change of control proposal	— Does not have a restriction on soliciting a transaction
— Meeting or communicating with a person who seeks to acquire stock in excess of ownership limits if the meeting relates to such acquisition, <i>[§ 5.05 of Voting Trust and Divestiture Agreement (p.15)]</i>	— Providing any confidential information to or having any discussions, meeting or other communications with any person with respect to change of control transactions unless pursuant to a change of control	— Meeting or communicating with a person who seeks to acquire stock in excess of ownership limits if the meeting relates to such	— Meeting or communicating with a person who seeks to acquire stock in excess of ownership limits if the meeting relates to such	— No equivalent provision

<p><i>Agreement (p. 15)]</i></p> <p>— Soliciting proxies from shareholders, calling special meetings of shareholders or initiating, soliciting or endorsing any shareholder proposals <i>[§ 5.07 of Voting Trust and Divestiture Agreement (p. 15)]</i></p>	<p>proposal approved by the board and submitted to shareholders for vote <i>[§ 5.06(a) of Voting Trust and Divestiture Agreement (p. 10)]</i></p> <p>— Soliciting proxies from shareholders or initiating or soliciting any shareholder proposals <i>[§ 5.02 of Voting Trust and Divestiture Agreement (pp. 8-9)]</i></p>	<p>acquisition, unless pursuant to a change of control proposal approved by the board and submitted to shareholder for vote.</p> <p>— No equivalent provision</p> <p>— No equivalent provision</p>
<p>— Foundation must advise Company of any inquiry regarding change of control proposal <i>[§ 5.05 of Voting Trust and Divestiture Agreement (p. 15)]</i></p> <p>— Joining in any litigation that alleges (1) the unenforceability of the articles, bylaws or voting trust and divestiture agreement, (2) that board should not enforce any acquisition or change of control proposal <i>[§ 5.06 of Voting Trust and Divestiture Agreement (p. 15)]</i></p>	<p>— Fund must advise Company of any inquiry regarding change of control proposal <i>[§ 5.06(b) of Voting Trust and Divestiture Agreement (p. 10)]</i></p> <p>— Joining in any litigation that alleges (1) unenforceability of the ownership limitations and other restrictions on Fund set forth in the certificate of incorporation, bylaws or the voting trust and divestiture agreement, (2) that the board should not enforce provisions, or (3) that the board should approve or disapprove any change of control proposal <i>[§ 5.07 of Voting Trust and Divestiture Agreement (p. 11)]</i></p>	<p>— Foundation must advise Company of any inquiry regarding change of control proposal</p> <p>— Joining in any litigation that alleges (1) the unenforceability of articles, bylaws or voting trust and divestiture agreement, (2) that board should not enforce such provisions, or (3) that board should not enforce such provisions, or (3) that board should approve or disapprove any acquisition or change of control proposal, <i>except that</i> Foundation may join litigation alleging that board should solicit such proposals or initiate a bidding process to seek such proposals</p>

REGISTRATION RIGHTS AGREEMENT – PRECEDENTS COMPARISON

ITEM	PREMERA	WELLCHOICE	RIGHTCHOICE	COBALT	WELLPOINT
Demand Registration Rights	<ul style="list-style-type: none"><li>● Commencing 180 days after the IPO, any and all of the time until all stock is sold, either Foundation has the right to demand registration of its shares</li><li><i>[§ 2(a)(i) of Registration Rights Agreement (pg.6)]</i></li></ul>	<ul style="list-style-type: none"><li>● Commencing 180 days from the date of the offering, any and all of the time until all stock is sold, Fund will have the right to demand registration of its shares and Foundation has the right to join the demand</li><li><i>[§ 2(a) of Registration Rights Agreement (pp.4-5)]</i></li></ul>	<ul style="list-style-type: none"><li>● Any and all of the time until all stock is sold</li></ul>	<ul style="list-style-type: none"><li>● Any and all of the time until all stock is sold</li></ul>	<ul style="list-style-type: none"><li>● Any and all of the time until all stock is sold</li></ul>
Exceptions: Company Not Required to Register	<ul style="list-style-type: none"><li>● If a demand registration occurred during preceding 120 days</li><li><i>[§ 2(d)(i) of Registration Rights Agreement (pg.8)]</i></li><li>● (A) For the first 54 months following 180 days from the IPO, if two demand registrations are effected during calendar year in which demand received and (B) and after such 54 month period, if one demand registration is effected during the calendar year</li><li><i>[§ 2(d)(ii) of Registration Rights Agreement (pg.8-9)]</i></li><li>● If Company effected a registration (i.e. not a demand registration) during preceding 120-day period (with exceptions: e.g., dividend reinvestment plans, etc.)</li><li><i>[§ 2(d)(iii) of Registration Rights Agreement (p.9)]</i></li></ul>	<ul style="list-style-type: none"><li>● If a demand registration occurred during preceding 120 days</li><li><i>[§ 2(c)(i) of Registration Rights Agreement (p.5)]</i></li><li>● (A) For the first 42 months following the IPO, if two demand registrations are effected during calendar year in which demand received and (B) after such 42 month period, if one demand registration is effected during the calendar year</li><li><i>[§ 2(c)(ii) of Registration Rights Agreement (p.5)]</i></li><li>● If Company effected a registration (i.e. not a demand registration) during preceding 90-day period (other than registrations related to dividend reinvestment plans and similar plans)</li><li><i>[§ 2(c)(iii) of Registration Rights Agreement (p.5)]</i></li></ul>	<ul style="list-style-type: none"><li>● If a demand registration occurred during preceding 180 days</li><li>● If a demand registration is effected during calendar year in which demand received</li></ul>	<ul style="list-style-type: none"><li>● If a demand registration occurred during preceding 120 days</li><li>● If a demand registration is effected during calendar year in which demand received</li></ul>	<ul style="list-style-type: none"><li>● If a demand registration occurred during preceding 6 months</li><li>● If a demand registration is effected during calendar year in which demand received</li></ul>



ITEM	PREMERA	WELLCHOICE	RIGHTCHOICE	COBALT	WELLPOINT
Exceptions: Company Not Required to Register (cont.)	<ul style="list-style-type: none"><li>● If number of securities has a market value of less than \$30 million (unless this is all that is left) [<i>§ 2(d)(iv) of Registration Rights Agreement (pg. 9)</i>]</li><li>● During a blackout period [<i>§ 2(d)(v) of Registration Rights Agreement (pg. 9)</i>]</li></ul>	<ul style="list-style-type: none"><li>● If number of securities has a market value of less than \$30 million (unless this is all that is left) [<i>§ 2(c)(iv) of Registration Rights Agreement (p. 6)</i>]</li><li>● During a blackout period [<i>§ 2(c)(v) of Registration Rights Agreement (p. 6)</i>]</li><li>●</li></ul>	<ul style="list-style-type: none"><li>● If number of securities has a market value of less than \$30 million (unless this is all that is left)</li><li>● During a blackout period</li></ul>	<ul style="list-style-type: none"><li>● If number of securities has a market value of less than \$30 million (unless this is all that is left)</li><li>● During a blackout period</li></ul>	<ul style="list-style-type: none"><li>● If number of securities has a market value of less than \$75 million</li><li>● During a blackout period</li></ul>
Demand Option (Company's option to buy Foundation's shares)	<ul style="list-style-type: none"><li>● Company has option to buy all, but not less than all, of the Foundation's shares proposed to be registered - price is average closing price on NYSE for 10 days ending on 2<sup>nd</sup> day preceding demand [<i>§ 2(b) of Registration Rights Agreement (pg. 7)</i>]</li></ul>	<ul style="list-style-type: none"><li>● No demand option</li></ul>	<ul style="list-style-type: none"><li>● Company has option to buy all or any portion of Foundation's shares proposed to be registered (unless remaining market value is less than \$30 million, in which case must buy all) - price is average closing price on NYSE for 10 days ending on 2<sup>nd</sup> day preceding demand</li></ul>	<ul style="list-style-type: none"><li>● Company has option to buy all or any portion of Foundation's shares proposed to be registered (unless remaining market value is less than \$30 million, in which case must buy all) - price is average closing price on NYSE for 10 days ending on 2<sup>nd</sup> day preceding demand</li></ul>	<ul style="list-style-type: none"><li>● Company has option to buy all or any portion of Foundation's shares proposed to be registered - price is average closing price on NYSE for 15 days ending on the 5th day preceding the demand</li></ul>
Company's Right to Sell Stock in Registration Demanded by Foundation	<ul style="list-style-type: none"><li>● Company may sell stock in registration demanded by Foundation<ul style="list-style-type: none"><li>— If underwriter advises a limitation in number of shares sold is necessary,<ul style="list-style-type: none"><li>— If Company includes shares in demand registration, Company must reduce shares sold</li></ul></li><li>— Foundation(s) to reduce shares to be sold if Company not selling any stock, but if the Foundation(s) receive aggregate proceeds of less than \$30 million as a result of the reduction, then it does not count as a demand registration</li></ul></li></ul> <p>[<i>§ 2(i) of Registration Rights Agreement (pg. 10-11)</i>]</p>	<ul style="list-style-type: none"><li>● Company may sell stock in registration demanded by Fund<ul style="list-style-type: none"><li>— If underwriter advises a limitation in number of shares sold is necessary<ul style="list-style-type: none"><li>— If Company includes shares in Fund demand registration, Company must reduce shares sold</li></ul></li><li>— Fund and Foundation reduces shares to be sold if Company not selling any stock</li></ul></li></ul> <p>[<i>§ 2(g) of Registration Rights Agreement (pp. 6-7)</i>]</p>	<ul style="list-style-type: none"><li>● Company may sell stock in registration demanded by Foundation<ul style="list-style-type: none"><li>— If underwriter advises a limitation in number of shares sold is necessary<ul style="list-style-type: none"><li>— If Company includes shares in Foundation demand registration, Company must reduce shares sold</li></ul></li><li>— Foundation reduces shares to be sold if Company not selling any stock but if Fund receives proceeds of less than \$10 million as a result of the reduction, then it does not count as a demand registration</li></ul></li></ul>	<ul style="list-style-type: none"><li>● Company may sell stock in registration demanded by Foundation<ul style="list-style-type: none"><li>— If underwriter advises a limitation in number of shares sold is necessary<ul style="list-style-type: none"><li>— If Company includes shares in Foundation demand registration, Company must reduce shares sold</li></ul></li><li>— Foundation reduces shares to be sold if Company not selling any stock but if Foundation receives proceeds of less than \$10 million as a result of the reduction, then it does not count as a demand registration</li></ul></li></ul>	<ul style="list-style-type: none"><li>● Company may sell stock in registration demanded by Foundation unless underwriter advises Foundation that such additional securities would materially or adversely affect the demanded offering</li></ul>
Shelf Registration	<ul style="list-style-type: none"><li>● Company may satisfy obligation by amending shelf registration [<i>§ 2(e) of Registration Rights Agreement (pg. 9)</i>]</li></ul>	<ul style="list-style-type: none"><li>● Company may satisfy obligation by amending shelf registration [<i>§ 2(d) of Registration Rights Agreement (p. 6)</i>]</li></ul>	<ul style="list-style-type: none"><li>● Company may satisfy obligation by amending shelf registration</li></ul>	<ul style="list-style-type: none"><li>● Company may satisfy obligation by amending shelf registration</li></ul>	<ul style="list-style-type: none"><li>● No equivalent provision</li></ul>

ITEM		PREMERA	WELLCHOICE	RIGHT CHOICE	COBALT	WELLPOINT
Piggy-Back Registration (Foundation's Right)		<ul style="list-style-type: none"><li>Company gives 15 business days notice to Foundations of right to sell any or all of their shares</li></ul> <p>[§ 3(a) of Registration Rights Agreement (pg. 11-12)]</p>	<ul style="list-style-type: none"><li>Company gives 15 days notice to Fund and Foundation of right to sell any or all of its shares. For any offering within 24 months from the IPO, Fund and Foundation may have its stock included in Company registration such that Fund and Foundation receives at their option up to 50% of the proceeds of sale</li></ul> <p>[§ 3(a) of Registration Rights Agreement (p. 7-8)]</p>	<ul style="list-style-type: none"><li>Company gives 15 business days notice to Foundation of right to sell any or all of its shares and its right, until Foundation owns less than 50% of Company's stock, to have its stock included in Company registration such that Foundation receives at its option up to 50% of the proceeds of sale</li></ul>	<ul style="list-style-type: none"><li>Company gives 15 business days notice to Foundation of right to sell any or all of its shares. Until Foundation has sold \$250 million in stock pursuant to registered offerings, it has option to have its stock included in any registration such that it receives up to 50% of the proceeds of the sale.</li></ul>	
		<ul style="list-style-type: none"><li>No piggy-back rights with respect to:<ul style="list-style-type: none"><li>Registration of merger, combination, employee stock benefit plan, dividend reinvestment plan, etc.</li><li>Offering solely to shareholders of Company or exchange offer</li><li>Redistribution of shares held in excess of ownership limits</li><li>Private placement</li></ul></li></ul> <p>[§ 3(c) of Registration Rights Agreement (pg. 12)]</p>	<ul style="list-style-type: none"><li>No piggy-back rights with respect to:<ul style="list-style-type: none"><li>Registration of merger, combination, employee stock benefit plan, dividend reinvestment plan, etc.</li><li>Offering solely to shareholders of Company or exchange offer</li><li>Redistribution of shares held in excess of ownership limits</li></ul></li></ul> <p>[§ 3(c) of Registration Rights Agreement (p. 8)]</p>	<ul style="list-style-type: none"><li>No piggy-back rights with respect to:<ul style="list-style-type: none"><li>Registration of merger, combination, employee stock benefit plan, dividend reinvestment plan, etc.</li><li>Offering solely to shareholders of Company or exchange offer</li><li>Offer of convertible securities</li><li>Redistribution of shares held in excess of ownership limits</li><li>Private placement</li></ul></li></ul>	<ul style="list-style-type: none"><li>No piggy-back rights with respect to:<ul style="list-style-type: none"><li>Registration of merger, combination, employee stock benefit plan, dividend reinvestment plan, etc.</li></ul></li></ul>	
		<ul style="list-style-type: none"><li>If underwriters advises to reduce number of shares</li><li>First round of cutbacks eliminates any shares requested by Foundations in excess of shares requested by Company; additional cutbacks, if necessary, are pro rata among shares remaining after first cutback</li><li>If both Foundations exercise their piggy-back rights and the underwriters advise that a cutback is necessary, the aggregate amount of shares the Foundations want registered are cut back pro rata</li></ul> <p>[§ 3(d) of Registration Rights Agreement (pg. 12-13)]</p>	<ul style="list-style-type: none"><li>If underwriter advises to reduce number of shares offered, all Company shares are included and Fund and Foundation shares are reduced except as described above with respect to offerings within 24 months of the IPO</li></ul> <p>[§ 3(d) of Registration Rights Agreement (p. 8)]</p>	<ul style="list-style-type: none"><li>If underwriter advises to reduce number of shares offered, all Company shares are included and Foundation shares are reduced except as described above with respect to period when Foundation owns 50% or more of Company's stock</li></ul>	<ul style="list-style-type: none"><li>If underwriter advises to reduce number of shares offered, all Company shares are included and Foundation shares are reduced</li></ul>	
		<ul style="list-style-type: none"><li>Company may withdraw registration without liability but the Foundations may, in effect, continue the registration</li></ul>	<ul style="list-style-type: none"><li>Company may withdraw registration without liability</li></ul> <p>[§ 3(e) of Registration Rights Agreement (p. 8)]</p>	<ul style="list-style-type: none"><li>Company may withdraw registration without liability</li></ul>	<ul style="list-style-type: none"><li>Company may withdraw registration without liability</li></ul>	<ul style="list-style-type: none"><li>Company may withdraw registration without liability</li></ul>

ITEM	PREMERA	WELLCHOICE	RIGHTCHOICE	COBALT	WELLPOINT
[§ 3(f) of Registration Rights Agreement (pg.13)]					
Drag-along Rights	• None	• None	• None	• None	• None

ITEM	PREMERA	WELLCHOICE	RIGHTCHOICE	COBALT	WELLPOINT
Continuing Option to Purchase	<ul style="list-style-type: none"><li>• No continuing option</li></ul>	<ul style="list-style-type: none"><li>• No continuing option</li></ul>	<ul style="list-style-type: none"><li>• After first date on which Foundation holds less than 50% of Company's shares, Company has option to buy all or any part of Foundation stock</li></ul>	<ul style="list-style-type: none"><li>• After demand registration or piggy-back registration with proceeds of \$10 million, private placement with proceeds of \$10 million, or purchase by Company from Foundation with proceeds of \$10 million, Company has option to buy all or any part of Foundation stock</li></ul>	<ul style="list-style-type: none"><li>• No continuing option</li></ul>
Blackout Periods	<ul style="list-style-type: none"><li>• Company can blackout a Foundation(s) demand for 120 days if<ul style="list-style-type: none"><li>— In good faith judgment of Company, it would materially and adversely affect planned or proposed business combination or any planned or pending financing, acquisition or corporate reorganization</li><li>— Following receipt of a demand but before effectiveness of registration statement, a third party has proposed, initiated or announced a transaction involving the Company and the Board determines the registration statement would materially and adversely interfere with such transaction</li></ul></li></ul> <p><i>[§ 6 of Registration Rights Agreement (pg. 14-15)]</i></p>	<ul style="list-style-type: none"><li>• Company can blackout a Fund and Foundation demand for 120 days if<ul style="list-style-type: none"><li>— In good faith judgment of Company, it would materially and adversely affect any planned, proposed or pending transaction</li><li>— Following receipt of a demand but before effectiveness of registration statement, a third party has proposed, initiated or announced a transaction involving the Company and the Board determines the registration statement would materially and adversely interfere with such transaction</li></ul></li></ul> <p><i>[§ 5 of Registration Rights Agreement (p. 9)]</i></p>	<ul style="list-style-type: none"><li>• If Company determines in good faith any of the following, they can blackout a Foundation demand for 120 days<ul style="list-style-type: none"><li>— Would materially and adversely affect any pending announced transaction</li><li>— Would result in premature disclosure of financing, acquisition or reorganization</li></ul></li></ul>	<ul style="list-style-type: none"><li>• If Company determines in good faith any of the following, they can blackout a Foundation demand for 45 days<ul style="list-style-type: none"><li>— Would jeopardize or delay any material transaction or would require disclosure of material information which Company has a bona fide business purpose for keeping confidential (except that if the material transaction is a pending financing plan, blackout period may be up to 110 days)</li></ul></li></ul>	

ITEM	PREMIERA	WELLCHOICE	RIGHTCHOICE	COBALT	WELLPOINT
Holdback	<ul style="list-style-type: none"><li>● If Company files registration and Company underwriter advises that a sale by Foundation would materially and adversely affect the offering, Foundation may not sell any stock for 90 days after effective date; only applies when:<ul style="list-style-type: none"><li>— Underwriters require directors and officers of Company to refrain from selling Company's securities for a like period on like terms and</li><li>— Foundations beneficially own 5% or more of Company's issued and outstanding common stock</li></ul></li></ul> <p><i>[§ 7(a) of Registration Rights Agreement (pg.15-16)]</i></p> <ul style="list-style-type: none"><li>● During 60-day period after registration filed by Company for underwritten demand offering by Foundation, Company will not sell any stock or security convertible into stock except for registration for dividend reinvestment plan, etc.</li></ul> <p><i>[§ 7(b) of Registration Rights Agreement (pg.16)]</i></p>	<ul style="list-style-type: none"><li>● If Company files registration and underwriter advises that a sale by Fund would materially and adversely affect the offering, Fund may not sell any stock for 90 days after effective date; only applies when:<ul style="list-style-type: none"><li>— Underwriters require directors and officers of Company to refrain from selling Company's securities for a like period on like terms and</li><li>— Fund beneficially owns 5% or more of Company's issued and outstanding common stock</li></ul></li></ul> <p><i>[§ 6(a) of Registration Rights Agreement (pp.9-10)]</i></p> <ul style="list-style-type: none"><li>● During 90-day period after registration filed by Company for underwritten demand offering by Fund, Company will not sell any stock or security convertible into stock except for registration for dividend reinvestment plan, etc.</li></ul> <p><i>[§ 6(b) of Registration Rights Agreement (p.10)]</i></p>	<ul style="list-style-type: none"><li>● If Company files registration and Company or underwriter advises that a sale by Foundation would materially and adversely affect the offering, Foundation may not sell any stock for 90 days after effective date of such registration statement</li><li>● During 30-day period after registration filed by Company for underwritten demand offering by Foundation, Company will not sell any stock or security convertible into stock except for registration for dividend reinvestment plan, etc.</li></ul>	<ul style="list-style-type: none"><li>● If Company files registration and Company or underwriter advises that a sale by Foundation would materially and adversely affect the offering, Foundation may not sell any stock for 90 days after effective date of such registration statement</li><li>● During 30-day period after registration filed by Company for underwritten demand offering by Foundation, Company will not sell any stock or security convertible into stock except for registration for dividend reinvestment plan, etc.</li></ul>	<ul style="list-style-type: none"><li>● If required by the underwriters, Foundation may not sell securities during the 30 days prior to and the 90 days after any underwritten registration has become effective, except as part of such underwritten registration</li><li>● If required by the underwriters, Company may not sell securities during the 30 days prior to and the 90 days after any underwritten registration has become effective, except as part of such underwritten registration</li></ul>

ITEM	PREMERA	WELLCHOICE	RIGHTCHOICE	COBALT	WELLPOINT
Expenses	<ul style="list-style-type: none"><li>● Company pays all Registration Expenses incurred by Foundations in the IPO. In addition, Company pays all expenses in connection with demand and piggy-back registrations. Registration Expenses exclude underwriter discounts, commissions and transfer taxes and fees for counsel to Foundations</li></ul> <i>[§10 of Registration Rights Agreement (p. 20-21)]</i>	<ul style="list-style-type: none"><li>● Company pays all registration expenses, except Fund and Foundation (if applicable) pay fees for underwriting discounts and commissions, transfer taxes, and its legal fees</li></ul> <i>[§ 8 of Registration Rights Agreement (p. 14)]</i>	<ul style="list-style-type: none"><li>● Company pays all registration expenses, except Foundation pays fees for underwriting discounts and commissions, transfer taxes, and its legal fees</li></ul>	<ul style="list-style-type: none"><li>● Company pays all registration expenses, except Foundation pays fees for underwriting discounts and commissions, transfer taxes, and its legal fees</li></ul>	<ul style="list-style-type: none"><li>● Company pays all expenses except if registration requested by Foundation is then withdrawn at the request of Foundation</li></ul>
Rule 144	<ul style="list-style-type: none"><li>● Sales by Foundation under Rule 144 available, but not until the Company's public float in its common stock exceeds \$50 million</li></ul> <i>[§ 11 of Registration Rights Agreement (pg. 21)]</i>	<ul style="list-style-type: none"><li>● Sales by Fund and Foundation under Rule 144 available</li></ul> <i>[§ 9 of Registration Rights Agreement (p. 14)]</i>	<ul style="list-style-type: none"><li>● Sales by Foundation under Rule 144 available, but not until Foundation has sold stock with proceeds of at least \$50 million</li></ul>	<ul style="list-style-type: none"><li>● Sales by Foundation under Rule 144 available, but not until Foundation has sold stock with proceeds of at least \$50 million</li></ul>	<ul style="list-style-type: none"><li>● Sales by Foundation under Rule 144 available</li></ul>
Private Placements	<ul style="list-style-type: none"><li>● Foundation may sell in private placement, but Company has option to buy all, but not less than all, at same price and on same terms and Company has 15 business days to make offer to purchase</li></ul> <i>[§ 12(a) of Registration Rights Agreement (pg. 21-22)]</i> <ul style="list-style-type: none"><li>● Company shall have the right to sell its securities via private placement</li></ul> <i>[§12(b) of Registration Rights Agreement (pg. 22)]</i>	<ul style="list-style-type: none"><li>● Fund and Foundation may sell in private placement</li></ul>	<ul style="list-style-type: none"><li>● Foundation may sell in private placement, but Company has option to buy all, but not less than all, at same price and on same terms and Company has 30 business days to make offer to purchase</li></ul>	<ul style="list-style-type: none"><li>● Foundation may sell in private placement, but Company has option to buy all, but not less than all, at same price and on same terms and Company has 30 business days to make offer to purchase</li></ul>	<ul style="list-style-type: none"><li>● Foundation may sell in private placement</li></ul>

ITEM	PREMERA	WELLCHOICE	RIGHTCHOICE	COBALT	WELLPOINT
Hedging	<ul style="list-style-type: none"><li>● Hedging not mentioned</li></ul>	<ul style="list-style-type: none"><li>● The Fund is permitted to enter into hedging transactions provided that such hedging transactions do not violate the terms of the Certificate of Incorporation, the Voting Trust and Divestiture Agreement or the Registration Rights Agreement</li></ul> <p>[§ 12 of Registration Rights Agreement (p.17)]</p>	<ul style="list-style-type: none"><li>● Hedging not mentioned</li></ul>	<ul style="list-style-type: none"><li>● Hedging not mentioned</li></ul>	<ul style="list-style-type: none"><li>● Hedging not mentioned</li></ul>
Indemnification and Contribution	<ul style="list-style-type: none"><li>● Standard reciprocal indemnity and contribution provisions. Carve-outs from indemnification in cases where prospective indemnitor sends timely curative information to prospective indemnitee</li><li>● Each Foundation is responsible only for statements that it makes in writing about itself and gives to underwriters</li></ul> <p>[§ 14 of Registration Rights Agreement (pg.22-26)]</p>	<ul style="list-style-type: none"><li>● Standard indemnity and contribution obligations of Company running to benefit of Foundation and Fund. No indemnification by Fund or Foundation. Carve-outs from indemnification in cases where prospective indemnitor sends timely curative information to prospective indemnitee</li></ul> <p>[§ 11 of Registration Rights Agreement (pp.14-17)]</p>	<ul style="list-style-type: none"><li>● Standard reciprocal indemnity and contribution provisions. Carve-outs from indemnification in cases where prospective indemnitor sends timely curative information to prospective indemnitee</li></ul>	<ul style="list-style-type: none"><li>● Standard reciprocal indemnity and contribution provisions. Carve-outs from indemnification in cases where prospective indemnitor sends timely curative information to prospective indemnitee</li></ul>	<ul style="list-style-type: none"><li>● Standard reciprocal indemnity and contribution provisions. Carve-outs from indemnification in cases where prospective indemnitor sends timely curative information to prospective indemnitee</li></ul>
Assignment of Registration Rights	<ul style="list-style-type: none"><li>● No assignment of registration rights, except that Foundation can sell shares to an institution in a private transaction in accordance with the voting trust and divestiture agreement and the shares owned by such institution will be treated as shares owned by Foundation under the registration rights agreement</li></ul> <p>[§ 19 of Registration Rights Agreement (pg.28)]</p>	<ul style="list-style-type: none"><li>● No assignment of registration rights, except that Foundation or Fund can sell shares to an institution in a private transaction in accordance with the voting trust and divestiture agreement and the shares owned by such institution will be treated as shares owned by Fund or Foundation under the registration rights agreement</li></ul> <p>[§ 18 of Registration Rights Agreement (p.19)]</p>	<ul style="list-style-type: none"><li>● No assignment of registration rights</li></ul>	<ul style="list-style-type: none"><li>● No assignment of registration rights</li></ul>	<ul style="list-style-type: none"><li>● May transfer registration rights to any transferee representing at least 4.9% of the outstanding common stock and must notify Company in writing and Company must enter into substantially similar registration rights agreement</li></ul>



TAKEOVER DEFENSES PRECEDENT

ITEM	PREMERA	WELLCHOICE	RIGHTCHOICE	COBALT	WELLPOINT
Removal of Directors	<ul style="list-style-type: none"><li>For cause with 75% of the issued and outstanding shares [Article III, § 8 of Articles of Incorporation (p. 13)]</li></ul>	<ul style="list-style-type: none"><li>For cause with 75% of the issued and outstanding shares [Article IV, § 7 of Certificate of Incorporation (p. 8)]</li></ul>	<ul style="list-style-type: none"><li>For cause with 75% of the issued and outstanding shares</li></ul>	<ul style="list-style-type: none"><li>For cause with 75% of the issued and outstanding shares</li></ul>	<ul style="list-style-type: none"><li>With or without cause, by a vote of a majority of shares and in accordance with the California Corporate Code</li></ul>
Shareholders Ability to Call Special Meeting	<ul style="list-style-type: none"><li>None after IPO [Article X of Articles of Incorporation (p. 29)]</li></ul>	<ul style="list-style-type: none"><li>None</li></ul>	<ul style="list-style-type: none"><li>None</li></ul>	<ul style="list-style-type: none"><li>As mandated by Wisconsin law</li></ul>	<ul style="list-style-type: none"><li>At least 10% of the votes entitled to be cast on any issue</li></ul>
Supermajority Voting Requirement for Amending Certain Provisions of Charter and Bylaws	<ul style="list-style-type: none"><li>An Independent Board Majority and at least 75% of the outstanding voting shares is required to amend certain provisions of the Articles of Incorporation [Article XIII of Articles of Incorporation (p. 29-30)]</li><li>At least 75% of the outstanding voting shares is required to amend certain provisions of the By-Laws [Article VIII, § 1 of By-Laws (p. 28)]</li></ul>	<ul style="list-style-type: none"><li>An Independent Board Majority and at least 75% of the outstanding voting shares is required to amend certain provisions of the Certificate of Incorporation [Article XII of Certificate of Incorporation (p. 23)]</li><li>At least 75% of the outstanding voting shares is required to amend certain provisions of the By-Laws [Article VIII, § 2 of Certificate of Incorporation (p. 22)]</li></ul>	<ul style="list-style-type: none"><li>An Independent Board Majority and at least 75% of the outstanding voting shares is required to amend certain provisions of the Certificate of Incorporation</li><li>At least 75% of the outstanding voting shares is required to amend certain provisions of the By-Laws</li></ul>	<ul style="list-style-type: none"><li>An Independent Board Majority and at least 75% of the outstanding voting shares is required to amend certain provisions of the Certificate of Incorporation</li><li>At least 75% of the outstanding voting shares to amend certain provision of the By-Laws</li></ul>	<ul style="list-style-type: none"><li>At least 75% of the shareholders voting at a meeting and affirmative vote of a majority of the outstanding shares of shareholders is required to amend certain provision of the Certificate of Incorporation</li><li>A majority of the outstanding voting shares to amend certain provision of the By-Laws</li></ul>
Stockholder Rights Plan	<ul style="list-style-type: none"><li>None</li></ul>	<ul style="list-style-type: none"><li>None</li></ul>	<ul style="list-style-type: none"><li>None</li></ul>	<ul style="list-style-type: none"><li>None</li></ul>	<ul style="list-style-type: none"><li>None</li></ul>
Quorum Requirement for Shareholder Meeting	<ul style="list-style-type: none"><li>Majority [Article I, § 6 of By-Laws (p. 2)]</li></ul>	<ul style="list-style-type: none"><li>Majority [§ 2.6 of By-Laws]</li></ul>	<ul style="list-style-type: none"><li>Majority</li></ul>	<ul style="list-style-type: none"><li>Majority</li></ul>	<ul style="list-style-type: none"><li>Majority</li></ul>
Other Acquisition Restrictions	<ul style="list-style-type: none"><li>Ownership Limitations [Article IV, § 2 of Articles of Incorporation (pp. 16-17)]</li></ul>	<ul style="list-style-type: none"><li>Ownership Limitations [Article VII, § 2 of Articles of Incorporation]</li></ul>	<ul style="list-style-type: none"><li>Ownership Limitations</li></ul>	<ul style="list-style-type: none"><li>Ownership Limitations</li></ul>	<ul style="list-style-type: none"><li>Ownership Limitations</li></ul>

TAX INDEMNIFICATION AGREEMENT

ITEM	PREMERA	WELLCHOICE	RIGHTCHOICE	COBALT	WELLPOINT
Indemnity Agreement	<ul style="list-style-type: none"><li>None</li></ul>	<ul style="list-style-type: none"><li>None</li></ul>	<ul style="list-style-type: none"><li>Foundation indemnifies RightCHOICE for tax liabilities occurring after the conversion</li></ul>	<ul style="list-style-type: none"><li>None</li></ul>	<ul style="list-style-type: none"><li>Foundation indemnifies WellPoint for tax liabilities occurring after the conversion</li></ul>



